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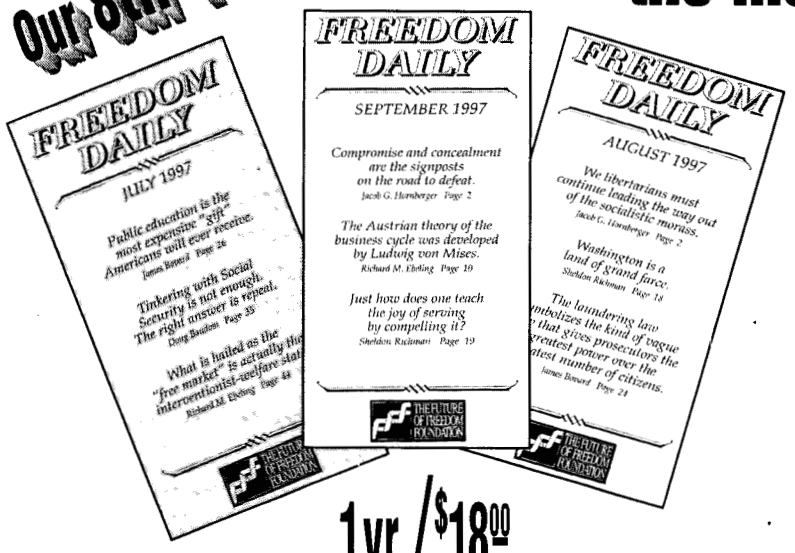
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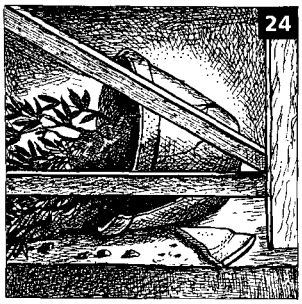

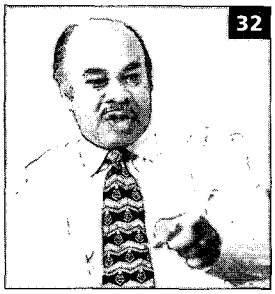

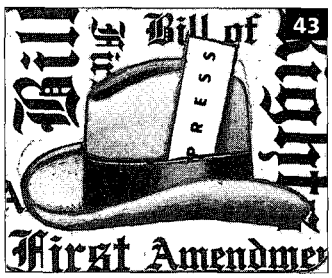

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Test Case

How relying on "the experts" failed public education.

By Virginia Postrel

"The Important Thing Is Education." A slogan from my childhood, it put everyone on notice that in *our* town court-ordered desegregation would proceed in an orderly and peaceful fashion. Regardless of racial politics, the primacy of education was something everyone could agree on.

Along with a lot of behind-the-scenes effort by opinion leaders (and a desegregation plan whose inconvenience mostly fell on black students), the slogan worked. Six weeks into my fourth-grade year, the schools closed for a Friday, and on Monday each was precisely 20 percent black and 80 percent white. There was no violence and minimal white flight. "The important thing is education," they told us again and again.

The slogan is an ingenious example of technocratic propaganda, interesting even today for that reason. It not only takes racial animus out of the discussion—a noble goal, especially in 1969—but subtracts every other value-laden question as well. It makes "education" an easily agreed-upon, uniform "thing." Pretty much everyone is, after all, in favor of education. All that's left to do is work out the details.

Education policy is thus the perfect technocratic test case. Here, if anywhere, governance by disinterested experts should work. We can simply ask experts on curriculum, on teacher training, on school design, and so on, to run things in the one best way.

Since at least the 1920s, that has been the promise of public school management. We bring together, as Ross Perot might put it, "the best experts," and they figure out how to run the schools. We consolidate governance in large school districts with well-staffed central offices and well-credentialed superintendents and administrators. We form state boards and commissions to regulate curricular requirements and establish standards. Everyone agrees on the goal—an educated next generation—so the only issue is deciding how most efficiently to achieve that goal.

It doesn't take much of a reality check to see that educational technocracy hasn't lived up to expectations. The details do matter, and they are endlessly controversial. Much public discussion focuses on hot-button questions of religion and race: Should children be allowed to have organized prayers in school? Should teachers be allowed to teach Darwinism? Creationism? How far should we go to maintain desegregated schools? How do we teach about slavery? About slave-owning Founding Fathers? The perfect talk-show education story is the school that recently changed its name from George Washington to Charles Drew, from the slave-owning father of our country to the African-American scientist who made critical discoveries about blood plasma. You can keep the phones busy on that one for hours.

Clearly, education policy isn't value-neutral. Picking one best way means leaving out all the others, some of which express convictions that at least some of the school-going (and taxpaying) public holds dear. The most easily debunked myth of technocracy is that it simply applies disinterested expertise to public questions. "Efficiency" implies objectives, values to be optimized. The optimization problem is a question for social science. But the values are not.

Emotionally charged issues of identity and values are hardly the only problem, however. Even the social science turns out to be tricky.

Consider recent controversies over California's math and science standards. After three years of wrangling, the state Board of Education recently adopted "back-to-basics" math standards that require third-graders to memorize multiplication tables, fourth-graders to do long division, and seventh-graders to (sort of) calculate square roots without electronic aids. An advisory commission had put more emphasis on concepts and less on calculation; the state schools superintendent accused the board of adopting "dumbed down" standards. It was hard to figure out where the truth lay. As a *Los Angeles Times* report noted, "Even the mathematicians in the audience...could not agree on whether the board's standards were superior to those put forth by the standards commission."

Meanwhile, the state has been taking flack on the science front. A committee that included three Nobel laureates submitted a bid to write science standards—for free—and lost out to a group made up mostly of Cal State-San Bernardino education professors. They wanted $178,000. The winning group was, the *Times* reported, "at the forefront of efforts to reform science education by making it less abstract, less about H2O and more about water." In this case, it's pretty clear who's doing the dumbing down. Amid terrible publicity, the state withdrew the contract and restarted the bid-evaluation process.

For almost two decades, standards have been the great hope of education reformers, the technocratic magic bullet. If we could just establish high enough expectations and test everyone to make sure students are learning, they said, we could significantly improve education. All we have to do is get the teachers unions to stop blocking every attempt to make their members accountable for what kids learn.

The debates in California suggest that standards have even bigger problems than the formidable obstacles presented by intransigent unions. One is the self-esteem-at-any-cost ideology of the education schools, frighteningly chronicled in Rita Kramer's 1991 book *Ed School Follies.* These schools—which control most entry into public school teaching and have a major hand in writing standards—draw almost all their students from a population with mediocre high school records and the

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attitudes to match. They may "love children," but they rarely love learning.

"I had a student, a very nice young man, who liked people and got along well with kids but just could not write," a professor at Eastern Michigan University, which trains more teachers than any other school, told Kramer. "His mother called me to complain because he was failing and I asked her, 'Does he really belong in education? In that field, our tools are reading and writing.' And she said, 'But if he's not a teacher, he'll have to go and work on the line.' So there you have it. We're the next-to-the-bottom rung."

Teachers drawn from the next-to-bottom rung have two big problems: They lack the understanding necessary to teach even slightly difficult material to students who don't immediately grasp it. (Smart kids can read the textbook, assuming it hasn't been dumbed down too much.) And they don't want to make students feel bad or bored—even if that means leaving a generation educationally crippled. States can try to toughen standards, but there's no telling how that will translate into classroom teaching.

As one local California school superintendent noted, the proposed math standards for fifth- and sixth-graders aren't much easier than the questions on the teacher competency test—and only two-thirds of would-be teachers pass the test the first time around. To please the teachers daunted by fifth-grade work, we wind up with standards that tell them to concentrate on water, not H_2O.

But, say the anti-traditionalists, such standards aren't necessarily dumbed down. They simply emphasize concepts rather than rote formulas. They expect students to *understand* what they learn, not just to store it in short-term memory.

That sounds great. Unfortunately, it lets people who want to avoid teaching anything hard—or anything mathematical—cloak that goal in language that appeals to people who care deeply about learning. One textbook promising an "integrated" (sounds good, right?) approach to algebra is so full of politics and so empty of math, writes a Texas Board of Education member, that "I could not for the life of me decipher whether I had been studying sociology, environmental science or world history" by the time the Pythagorean Theorem appeared on page 502.

Still, asking students to make up their own problems can be a useful teaching method. Fooling around with blocks really can help some students grasp math concepts better than paper-and-pencil work—though claiming students are deriving the Pythagorean Theorem, a difficult proof, on their own indicates teaching fraud. Determining square roots (in California, the integers between which the square root will fall) is less valuable, and arguably less difficult, than setting up and solving word problems. If you could trust the teachers who say they want to concentrate on concepts to really teach them, they could make a good case for that approach.

But you can't trust them. And the reason lies in the very technocracy that claims to make schooling a matter of neutral expertise. Instead, it has insulated public schools from competition and feedback, making them worlds unto themselves. When they adopt new theories, only their students bear the consequences of failure. And those consequences can be huge: Fully half of all students admitted to the Cal State system, which takes students from the top third of their high school classes, have to take remedial math.

Based on the 1996 election results, the conventional wisdom holds that criticizing the public schools is politically dangerous. It offends soccer moms. Not criticizing the schools, however, is far more dangerous. It sacrifices not merely a political career here or there but entire generations of students. To officials too afraid to suggest that competition might be called for, here's a slogan to remember: The important thing is education.

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Milk Money

Set Bossie free!

By Brian Doherty

Federal regulation of the milk industry is a fine example of madly complex modern bureaucracy. It divides the nation into 32 "marketing areas," with prices and subsidies that vary depending upon the use of the milk (fluid, cheese, butter) and—believe it or not—the distance between the cow and Eau Claire, Wisconsin.

In early November, U.S. District Judge David Doty struck a blow for dairy sanity by declaring aspects of the price control system "arbitrary and capricious." The ruling came in response to a lawsuit by dairy farmers from the upper Midwest, who live close to Eau Claire and resent the higher minimum prices enjoyed by more distant farmers.

Milk price controls and marketing orders, which date back to the New Deal, illustrate what happens when the pragmatic, reform-minded spirit of progressivism hits the trading floor where political favors are exchanged for cash. The logic or ideology behind federal milk policy is expressed only in the vague language of "fair prices." In this context, that means whatever prices keep the greatest number of cartelized farmers solvent.

This concept of fairness implies that every American deserves whatever can be squeezed out of his fellow citizens via the government. As tax consumers, most Americans doubtless believe this; as taxpayers, they don't. But the cost in terms of higher milk prices and bureaucratic payroll is so diffused that it's nobody's prime political concern.

One interest group that should care about this program is the good-government crowd pushing campaign finance reform. In addition to its other flaws, federal milk policy has long been rich loam for political corruption.

In the newly released White House tape transcripts, Richard Nixon and Treasury Secretary John Connally candidly discuss expected contributions from dairy interests. It's hard to distinguish these donations from outright bribery: The farmers gave Nixon big bucks, and Nixon made sure the federal price subsidy went up.

Post-Watergate reforms have not changed the situation much. In 1974, the year the Federal Election Campaign Act passed, dairy interests gave only $100,000 for congressional races; in 1976, they gave $1.4 million. The dairy lobby overwhelmingly prefers incumbents, who are aided by reforms that have made it tougher for challengers to raise money. A December 1997 *Money* magazine analysis showed that dairy interests gave $2 million during the 1995–96 election cycle, getting $1.3 billion in price supports for their investment.

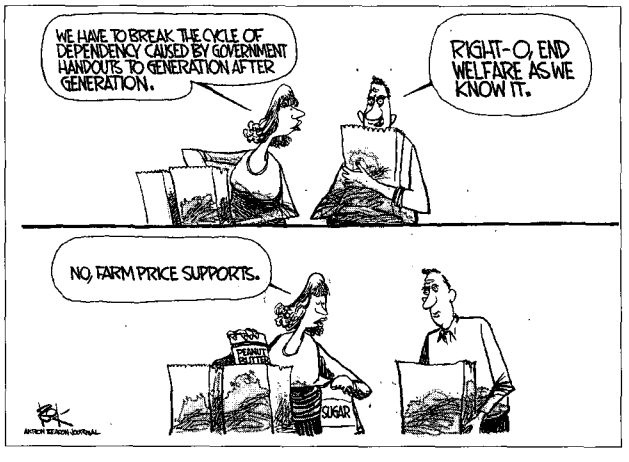
In a conversation with dairy lobbyists, Nixon bluntly spelled out a point that campaign finance reformers still don't grasp. "I know you are a group that are [sic] politically very conscious," he said. "Not in any partisan sense, but that you realize that what happens in Washington, not only affecting your business, but affecting the economy...affects you....A lot of businessmen...that I get around this table, they'll yammer and talk a lot but they don't do anything about it. And you do, and I appreciate that."

Political corruption follows political power. Dairy interests would be a lot less civic-minded if lucrative payoffs weren't in the offing, because in the long run federal controls and subsidies are bad for the milk market. Government's market manipulations can't hold back the technological and systemic changes that make jobs we get really good at, such as farming, rapidly dwindle. Government-backed regional cartels, for example, are senseless in an era of efficient storage and transportation that could easily allow one productive dairy region to supply the whole nation.

Even with federal protections for milk producers, over the past decade alone their number has dropped by 44 percent. In the face of inevitable economic change, dairy farmers seem unable to cope. Wisconsin's senators, Russell Feingold and Herbert Kohl, recently lamented in the *Wisconsin State Journal* that other farmers "have tools such as crop insurance, high volume futures markets and, in some cases, revenue insurance to help them manage price and production risk. These tools, if they are available at all to dairy farmers, are still in a fledgling stage." Dairy farmers haven't developed such tools because they haven't had to. Political clout rather than attention to markets has protected their bottom line.

In the wake of Judge Doty's decision, the Department of Agriculture begged for a stay as it scrambled to meet a year-end deadline to reconfigure the milk pricing system. Huge milk cooperatives are merging into even huger ones for economies of scale. And various multi-state cartels are forming, trying to emulate the new Northeast Interstate Dairy Compact in locking out extraregional milk and guaranteeing that even absent the federal rules, regional consumers will pay more for milk than is necessary or sensible.

Dairy price supports will be phased out by 2000, thanks to the 1996 farm bill. But throwing programs that were ill-conceived and illegitimate to begin with out of the federal realm and into regionalized cartels is no improvement. As states and localities step forward to shoulder formerly federal burdens, they need to ask not just who should manage a given program but whether it should exist at all. For now, regional cartels seem prepared to make sure that famous milk moustache continues to hide the sly grin of agribusiness as it milks the public. ◆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ClintonCare Lite

A gradualist approach to national health care

By Michael W. Lynch

In October 1994, after President Bill Clinton's five-pound Health Security Act had been declared dead, Secretary of Health and Human Services Donna Shalala invoked Mark Twain on the pages of *The Washington Post*, writing, "Like Twain's demise, the death of health care reform has been greatly exaggerated."

Unfortunately, Shalala was right. They're ba-ack!

In 1993, the proclaimed health care crisis was one of "access," and it was reportedly driven by spiraling insurance prices. The solution to that crisis was "universal coverage" via a federally run system of managed care. Now, after a period of price stability, the announced crisis is one of "quality." The solution this time: "minimum standards," which is code for a federally regulated system of managed care.

In September 1996, Clinton created the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry to advise him "on changes occurring in the health care system and, where appropriate, to make recommendations on how best to promote and assure consumer protection and health care quality." Co-chaired by Shalala, the commission delivered its first report, *The Consumer Bill of Rights and Responsibilities*, in November.

Meanwhile, on the Hill, Republicans led by Alfonse D'Amato (R-N.Y.) in the Senate and Charles Norwood (R-Ga.) in the House are pushing the Patient Access to Responsible Care Act (PARCA). Norwood has amassed 210 co-sponsors—including 90 Republicans. So similar is the thinking at both ends of Pennsylvania Avenue that, on release of the commission's *Consumer Bill of Rights*, Norwood chided Clinton for his dilatory approach. "The time for talks and studies is over," claimed the Georgia Republican in a statement issued to the press. "We already have the legislation that will correct the managed care problems the Presidential Commission is finally addressing."

Let's examine these proposals.

Both PARCA and the commission's Bill of Rights exemplify a familiar bureaucrats-know-best mentality—a view that insists life's trade-offs should be made not by individuals weighing marketplace alternatives but by "experts" studying each other's white papers. In a startling admission, the commission notes that its recommendations "may create additional costs" and "that ultimately consumers bear these costs in the form of lower wages, higher prices, higher taxes or reduced benefits in other areas." But it then proclaims that "the Commission has attempted to weigh these factors carefully," even while admitting it never tried to estimate either costs or benefits—much less acknowledge that they might vary from person to person.

Both proposals also purport to ensure a minimum level of quality, secured by federal mandates in such areas as choice of provider, access to emergency services, and complaints and appeals. In each of these areas, one theme is consistent: It is a dangerous thing for markets to evolve without the express written consent of the federal government. The problem, you see, is not so much a lack of safeguards for consumers, but that these standards are emerging from the managed care marketplace and haven't been dictated by Washington.

Consider the push for "network adequacy." "Consumers have the right to a choice of health care providers that is sufficient to ensure access to appropriate high-quality health care," the commission boldly writes. To ensure this "right," the commission wants the federal government to mandate network standards established by the National Association of Insurance Commissioners.

PARCA backers share this concern. They want the government to dictate the "number, mix, and distribution of health professionals" an insurer must maintain. That consumers and corporate benefit buyers might be able to weigh the quality of a network against the price of the product on their own seems not to occur to the Washington players.

The same mentality is center stage in the commission's chapter on complaints and appeals. The commission notes that "[v]irtually all private and public health plans provide consumers with some form of complaint resolution process." So what's the problem? These processes are neither uniform nor approved by the federal government. The commission proposes a solution: an external review board.

At the other end of Pennsylvania Avenue, the proposed regulations are couched as "due process," for both enrollees and providers. Patients, it turns out, have a "due process" right to have a licensed doctor conduct utilization review, the procedure managed care companies use to approve medical procedures. Doctors have "due process" rights to apply for a job each year at every HMO and to have their applications reviewed, regardless of whether there are any openings.

Other calls for federal mandates in the *Consumer Bill of Rights* include "access to qualified specialists for women's health services," for "culturally competent" care, and for language translation. PARCA would force insurers to maintain a "quality improvement program" and disclose to enrollees the portion of each premium dollar that goes to marketing.

Then there's the wild card: the call for nondiscrimination. PARCA states, "No insurance issuer may discriminate...in any activity that has the effect of discriminating against an individual on the basis of race, national origin, gender, language, socioeconomic status, age, disability, health status or anticipated need for health services." The commission's recommendations contain similar language.

At best, this is merely politically correct pablum that will lead to disparate-impact suits. More likely, it is a Trojan horse for two policies that would destroy the market for private health insurance: guaranteed issue (if a plan is open to one it must be open to all), and community rating of premiums (old and young, sick and healthy pay the same premiums).

In her 1994 *Washington Post* op-ed piece, Secretary Shalala wrote, "[L]ife is a preexisiting condition. When insurance companies deny coverage to a person ...because they are considered to be at risk of getting sick...I call it discrimination."

Make no mistake: The forces of national health care are back, this time with the support of more than a handful of Republicans. The immediate target may be managed care, but the eventual goal is national health care. Managed care must mean care managed from Washington.

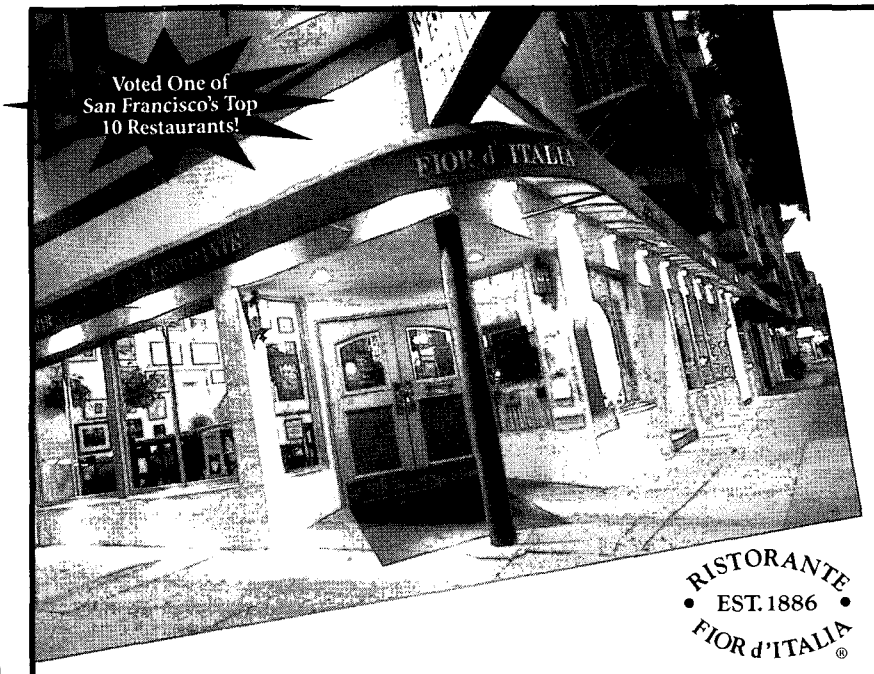
In September, President Clinton told the Service Employees International Union that if "what I tried before won't work, maybe we can do it another way." Upon accepting his commission's recommendations, Clinton confirmed his plan: "[W]hile people may not have wanted to bite the whole apple at once in 1994, almost the whole populace wants to keep nibbling away at the apple until we actually have solved the problems of cost, accessibility and quality for all responsible American citizens."

One can only hope that "responsible American citizens" will realize that this apple is rotten before a slithery Clinton and his compatriots in Congress persuade them to take another bite.

REASON NEWS

■ *Reason Online*'s expanding selection of features now includes Reason Forum, moderated discussions you can join on such issues as tax reform and affirmative action; Senior Editor Jacob Sullum's Creators Syndicate columns; and the weekly column from Washington that Contributing Editor Carolyn Lochhead writes for the *San Francisco Chronicle*. Check www.reason.com regularly for the latest.

■ Attention college students: REASON is accepting applications for the 1998 Burton C. Gray Memorial Internship. The intern works at least 10 weeks in our Los Angeles office and receives housing, a stipend of $2,000, and up to $400 in travel expenses. The job includes reporting and writing for REASON, helping with research, proofreading, and other magazine-related tasks. To apply, send your résumé, up to five writing examples, and cover letter to: Gray Internship, c/o Rick Henderson, REASON, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034. The deadline is **March 13, 1998.**



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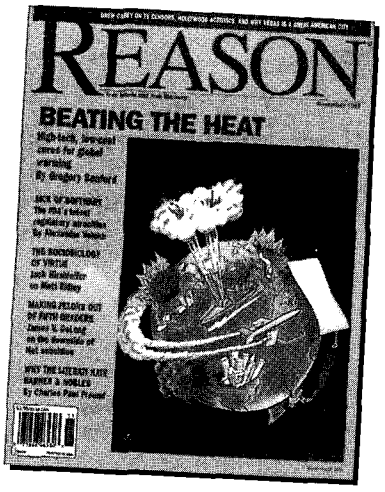

Talking About the Weather

Regarding Gregory Benford's cover story "Climate Control" (November): Bravo! I have waited several years for a reasoned discussion of the technical issues buried in the fog of propaganda on anthropogenic influences on climate. I suspect this piece will infuriate proponents of draconian government action.

I am struck by the persistent inconsistency of the position that inadvertent consequences of human energy use cannot be counteracted by intentional mitigation efforts. The thesis seems to be that mankind can only influence the environment negatively and unintentionally. Benford should consider a similar contribution to *Scientific American.*

Frank Albini
Research Professor
Mechanical & Industrial Engineering
Montana State University
Bozeman, MT

Benford's story was the first time I have been exposed to a point of view on climate that didn't portray modern industrial man as bumbling, incompetent, destructive, and incapable of effective action of any kind short of self-immolation. I have never understood environmental Puritanism and find it difficult, if not impossible, to challenge such Puritans rationally.

This becomes even more difficult when scientists themselves espouse these puritanical ideas. I'm sure many of Benford's suggestions, and even the very idea of geoengineering, went over with some people as well as a whale-blubber sandwich at a Greenpeace rally. This is to be expected. Fortunately, history shows that apocalyptic and Luddite movements quickly become irrelevant when their irrational fears are proven wrong by either time or the preponderance of evidence.

Unfortunately, when these movements have powerful state support, a lot of unnecessary damage can occur. Environmental Puritanism pretends to know the answer to every question concerning man, technology, and the environment: Technology: bad! Man: bad! Nature: good! All without considering man as an integral part of nature.

Before going to engineering graduate school, I worked for several years in the pulp and paper industry and learned the truth about recycled paper. I once suggested to an environmentalist acquaintance that as a small contribution to reducing greenhouse gases, we should collect paper, compress it into blocks, and bury it in an anaerobic environment. The process consumes less energy than recycling the paper (thus lowering greenhouse gas emission), and we'd be supporting a process that removes carbon from the atmosphere, makes good use of it as paper, and confines it forever underground. We could even bury it in old coal seams and provide coal for our (distant) descendants!

Needless to say, even though this person could not find any reasonable flaw with the idea, I was viciously attacked for even suggesting that using lots of paper and then putting it into a "landfill" could help the environment. I now suggest this idea whenever I want to have fun with certain environmentalists. It's like a Zen riddle to them.

Gregory Wojak
gjwojak@eos.ncsu.edu

Benford's article was very good. I had heard about the iron addition game but didn't have the details of the results. One interesting aspect of this approach is the possibility of ocean ranching. For example, take a large rotating mass of water in a low-productivity, iron-short area of the ocean. Within a few days we will see the algae bloom with about 2,000 tons of algae for each ton of iron. Zooplankton will then bloom to consume the algae, but before the zooplankton really gets going, we introduce filter-feeding fish larvae. Some species of fish will grow to harvest size in 60 to 90 days, with a weight gain of 10,000 kilograms or more.

This food chain will recycle some of the nutrients and decrease the overgrazing by the zooplankton, thereby stabilizing the system, with the energy flowing into the fish biomass and the carbon sinking with the fish feces. The added nutrient recycling and slower grazing rates should result in more carbon removal per kilogram of iron. The sinking rate of the high-carbon fish waste can be much faster than the smaller particles formed from the zooplankton.

Going into areas with few fish predators and parasites, we could transfer a lot of energy into fish biomass and get rid of a lot of carbon at the same time. Energy transfer efficiencies of marine food chains are very high (they can be in the 30 to 60 percent range—marine life don't spend energy keeping warm or fighting gravity). For every kilogram of iron, we could end up with 200 or more kilograms of fish, which is worth a lot more than a kilogram of iron waste product.

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A profitable carbon removal system could become reality long before the governments can decide what to do. Some entity would have to enforce temporary property rights to a water mass to keep someone else from harvesting your crop.

Dallas E. Weaver, Ph.D.
Scientific Hatcheries
Huntington Beach, CA

I enjoyed Dr. Benford's article very much. I continue to be optimistic that people will see science and technology as our friends and not the enemy. I am disheartened when so many scientists seem to believe that science is good, but applied science is the root of all evil.

I had some questions concerning various assertions I've heard regarding global warming. I've heard that if the atmosphere does increase in temperature, a greater amount of moisture will evaporate from the ocean surface. The presence of more water vapor increases the cloud cover over the oceans, thus increasing the Earth's albedo. As a result, the Earth's atmospheric temperature is self-regulating. Is this thinking correct?

I have also read that the CO_2 and other greenhouse gases released into the atmosphere are almost entirely a by-product of natural processes (e.g., volcanic eruptions) which almost completely eclipse human contributions. Is this so?

Greg Parsons
Cincinnati, OH

Benford suggests a series of Rube Goldberg "climate controls" to mitigate the effects of greenhouse gases, despite the complete lack of scientific consensus that global warming is occurring, that it is an imminent threat, or that humans are the cause. Benford speaks of a "consensus that the only way to counter global warming is by reducing emissions." No such consensus exists.

A recent Gallup poll of the Meteorological Society and the American Geophysical Society shows that 17 percent agreed with the proposition that human actions were causing global warming, while 83 percent disagreed. Only 13 percent of scientists responding to a Greenpeace survey believe catastrophic climate change will result from continuing current patterns of energy use. Recently more than 100 noted scientists, including the former president of the National Academy of Sciences, signed a letter declaring that costly actions to reduce greenhouse gases are not justified by the best available science.

The man who started the ruckus by telling Congress in 1988 he believed "with a high degree of confidence" that global warming had arrived, NASA's James Hansen, now thinks the net effect of recent atmospheric changes to be far too small to have much of an effect on temperature. Harvard's Brian Farrell has said bluntly: "There really isn't a case being made for the detection of greenhouse warming."

The facts are, as noted by Robert C. Balling, director of the Office of Climatology at Arizona State University, that the world has seen an increase in the level of carbon dioxide and other greenhouse gases from 305 parts per million in 1890 to 432 parts per million by 1990, a 42 percent increase. Yet during this period the planetary temperature rose a meager 0.45 degree Celsius.

The plot thickens when we observe that 0.4 degree of this increase occurred before World War II, while much of the rise in greenhouse gases occurred after this date. The timing of this modest warming is not consistent with the rise in greenhouse gases. The effect seems to precede the alleged cause.

In fact, as Dr. Balling notes, despite all the talk about global warming during the 1980s, the buildup of greenhouse gases from 1979 to 1994, and the anticipated 0.3 degree per decade warming, highly accurate satellite-based global temperature measurements not only show no warming but instead show very real cooling, a statistically significant cooling of 0.13 degree Celsius over this period.

Even if the Earth's temperature has increased slightly, the increase is well within the natural range of known temperature variation over the past 15,000 years. Indeed, the Earth experienced greater warming between the 10th and 15th centuries, predating the Industrial Revolution.

A slight warming trend that occurs mostly in winter and at night (which many scientists consider the most probable scenario) would actually benefit mankind, producing milder winters and longer growing seasons. Carbon dioxide, rather than being a pollutant, makes forests and crops more abundant.

Benford claims that "systematic weather prediction has advanced more than tenfold in its assured time range" and that with "the latest systems, backed by heavy computer modeling, we will shrink uncertainties." Let's hope so. Current global warming predictions are based on computer models that cannot replicate what is already known about climate changes over the past 50 years.

One of Benford's goals is to increase the amount of sunlight reflected back into space. He'll have to reflect more than he figured. In the current issue of the journal *Science*, Richard Wilson, an atmospheric physicist from Columbia University's Center for Climate System Research, reports evidence that the sun has been gradually brightening over the past few decades, with total solar irradiance increasing over the past 19 years by about 0.036 percent per decade. If that continued over a century, it would be enough to bump global temperatures up by about 1 degree Fahrenheit or more.

Astrophysicist Sallie Baliunas of the Harvard Smithsonian Center for Astrophysics and colleagues have studied records going back 120 years and conclude that between 70 and 90 percent of global temperature shifts are sun-induced, not man-induced. It could just be that Benford, Clinton, and Gore have been standing out in that sun too long.

Daniel John Sobieski
Chicago, IL

I agree strongly that if global warming were treated as a technical problem instead of a moral outrage we could cool the world. Having said that, I wonder whether the world really needs cooling. The idea that anyone knows the "global" temperature in 1897 to within 0.5 degree Celsius seems bizarre, to say the least.

Most of the alarm about global warming appears to stem from a prediction made by a computer program. Perhaps Dr. Benford can help me there. Whose computer program? Where is it docu-

mented? Where are the peer reviews of the program and its predictions? I spent most of my professional career creating and running computer models of physical systems—including gas-to-surface and gas-to-gas radiant energy transfer—and interpreting the results. I learned early to be extremely wary of programs until they have been shown to agree with results observed in a physical system. To the best of my knowledge, the global warming program fails that test. Does it, for example, predict that the tropopause is much higher and colder over the tropics than over the temperate zone, as a wealth of observations testify? How is the exchange of air across the tropopause modeled?

As an engineer I firmly believe that given incentives, we could cut energy consumption in half within a couple of decades without significantly impacting anyone's standard of living. How? Simply shift a major portion of the federal tax load from income to carbon fuels and let consumers decide how and where to cut. To anticipate the cry, "This will hurt the poor!," start by replacing the Social Security tax with a carbon tax. Certain lead-footed drivers might have to settle for accelerating from zero to 60 in 11 seconds instead of eight, but that doesn't seem like a severe burden.

Benford's suggestion of white roofs to reduce air-conditioning loads is well taken. Similarly, reducing the huge expanses of glass in office buildings would be a step in the right direction. We could also use 480-volt electricity instead of 120; the big saving there would be in the transformers that supply our homes. Railroads can move a ton of freight a mile for about one-fourth the energy of trucks, and that doesn't even take into account the energy needed to build and maintain highways. We could go on and on in that vein.

Another point: I don't know what Benford means by operating aircraft jet engines "rich." Does he mean an overstoichiometric fuel-air mixture? Gas turbine engines operate with a huge amount of excess air. Even to approach a stoichiometric mixture would quickly melt the turbines down to slag. Furthermore, independent of cost, fuel is such a large part of an airliner's takeoff weight that to require them to carry still more would quickly become prohibitive.

About Benford's other suggestions: We should wait until we're sure they're needed before we tinker with the world's atmosphere.

Leon Billig
lobillig@tcmnet.com

While I generally like REASON, I found "Climate Control" to be below the general quality of the magazine. I especially disliked the idea that some of the climate control solutions could be foisted on the public without their suspecting it. Not what I would expect in a magazine that generally favors lessening government intervention in our lives.

Gabe Gargiulo
Manchester, CT

Gregory Benford replies: I applaud Dallas Weaver's ingenious idea, which is just the sort I sought to stimulate with my article. Markets can mitigate warming effects better than a Greenhouse Czar.

Daniel Sobieski and Leon Billig want me to write another sort of article, arguing whether warming is real. I simply take the preponderant opinion of atmospheric scientists, who use a panoply of indicative effects (not just computer simulations) to conclude that warming is at least partially human-driven. Sallie Baliunas's signs that the sun is getting warmer may explain much of it (a discussion of this was cut from my article for space reasons), but even if so, we will still need mitigation methods (mostly increased reflection) if it persists.

The offsettings cited by Greg Parsons are apparently real, but don't fully compensate for greenhouse effects from humans, who make a substantial contribution to the overall CO_2 balance.

Gregory Wojak and Frank Albini are right: Emotion and posturing have dominated discussion so far, but I hope they can be bested by reason (and REASON).

I found amusing Gabe Gargiulo's notion that I would advocate foisting solutions on an unsuspecting public in a national magazine; one would think that would ruin the supposed secrecy. Of course, I merely said the best methods will not be intrusive, and keeping out of people's backyards will provoke less resistance—always a good idea.

FDA vs. Doctors

Alexander Volokh's article "Software Pirates" (November) grapples with an evolving dispute pitting licensed physicians' sovereignty against FDA intrusion into private doctors' offices with its attempts to regulate any and all medical devices, including computer software.

As a physician and former FDA medical reviewer for excimer lasers, I have been disappointed with the FDA's misguided crusade against a few highly trained refractive surgeons using unapproved, custom excimer lasers in their private practices. Why would an agency that gets criticized regularly for foot-dragging and excessive tardiness in completing its assigned workload squander significant resources to crucify these few custom laser physicians engaged in the private practice of medicine?

To justify overruling safeguards in the law protecting physicians from FDA oversight, the FDA has redefined these physicians as "manufacturers" just because they advertise their treatment to the public. Having rewritten the definitions to suit its needs, the FDA sets precedent by subjecting these physicians in the private practice of medicine to the same regulations as medical device manufacturers. Instead of partnering with these innovative physicians, the FDA intends to destroy them.

FDA boosters will ask, "Yes, but what about these unregulated lasers?" Trust me as a physician: FDA sanctions offer little deterrent compared to an aggressive trial lawyer suing for malpractice. One might then ask, "What motivates eye surgeons like Dr. Trevor Woodhams in this story?" The answer is simple: In his expert medical opinion, treating his patients with an FDA-approved device limited by software restrictions is more risky than treating with his own custom-tailored excimer laser. FDA management has arrogantly preempted Dr. Woodhams's lawful right to practice medicine, claiming to know better than he how to treat patients. Who would you choose to

give you medical care: an armchair bureaucrat from the FDA or a highly qualified physician like Dr. Woodhams? Dr. Woodhams gets my vote.

Instead of nurturing cooperation through judicious "enforcement discretion," for the benefit of all concerned, FDA management intentionally wields enforcement indiscretion. Had it not been for such highly respected and visionary physicians like Woodhams, there would be no debate on current alternatives in laser vision correction. FDA is in the business of approving medical devices. As a physician, I say, "Please keep the FDA far away from the art and science of taking care of real patients."

Mark D. Stern, M.D.
Brinklow, MD

Simplifying Complexity

In "Computer Games" by James V. DeLong (November), the simplicity of the explanation about how the government can take a simple statement and turn it into a billion dollar program impressed me. I knew, but didn't know. As a federal employee in the Defense Department, I have a deep appreciation for how the government works but I never could completely comprehend the massive machine that was slowly churning in Washington. This article explained the functioning of the government in 10 minutes. Good job.

Mark Sapp
sapp_m@coastalnet.com

Volume Sellers

Charles Paul Freund convincingly explains why statist elites despise large bookstores such as Barnes & Noble and Borders ("Literature in Chains," November). After reading Freund's article, I recalled growing up during the 1970s in suburban New Orleans. Back then, the only bookstores I knew were Walden-Books outlets in the local shopping malls. This chain was OK, but even a not particularly precocious 19-year-old quickly grew bored. Not until I moved to Manhattan in 1980 did I learn how genuinely joyful book shopping can be. About the only thing I regretted about moving away from New York two years later was that I no longer had access to outstanding bookstores.

Four or five years ago, however, my regret finally disappeared. The spread of Barnes & Noble and Borders meant that no longer did I have to be in New York or San Francisco to have access to the finest in book shopping. These chains brought outstanding book shopping to me even though I lived in upstate South Carolina.

As with so many attacks on the market, the crusade against large bookstore chains reflects the hostility of elites toward the masses' being well served.

Donald J. Boudreaux
President
Foundation for Economic Education
Irvington-on-Hudson, NY

Skeptic About Skeptics

Brian Doherty's review of my book, *Why People Believe Weird Things* ("Critique of Pure Skepticism," November), is one of the most intelligent and thoughtful of the 50 or so reviews that have been published to date. He correctly points out that many of the "weird things" in my book are not explained by the generalization of "hope springs eternal" (in the attempt to answer the "why people believe" question). I tried to make the point in my final chapter that the specific reasons for belief obviously will vary with the belief system.

Doherty also notes that I spend some time "indulging in ad hominem assaults on the racist motives of Wycliffe Draper," founder of the Pioneer Fund, a major backer of research on racial differences in IQ. True, but I am a historian and I am interested in extra-scientific issues like who does the funding and what biases in one's research this might create. So, the question is, how can one explore this interesting and (I think) important aspect of science without being accused of the ad hominem attack?

Two minor corrections: 1) The magazine I edit is *Skeptic*, not *The Skeptic*; and 2) The proof that I really did think I was abducted by aliens during the 1983 bicycle Race Across America (due to sleep deprivation and riding 1,280 miles nonstop), as I noted in the book, is that it was filmed by ABC's *Wide World of Sports*, which aired a segment in which Eric Heiden interviewed me about my bizarre hallucinations. If I made it up in order to support my skeptical position 14 years later, I really must be a psychic!

Two significant corrections: 1) My "proof" that Satanic cults are panics and not real is the fact that there is no evidence that they exist. True, skeptics cannot prove a negative—I can't prove Satanic cults don't exist—but the burden of proof is not on me to disprove the cults' existence, it is on those who claim they exist to prove that they do. 2) My statement that "science became my belief system, and evolution my doctrine" was not a slip. Believe me, every editor at Freeman asked me if I really wanted to say it that way. Yes, I did, because science is a belief system—different from all others in its self-correcting nature—but a belief system nonetheless.

However, my statement that it is our job "to investigate and refute bogus claims" was a slip. Doherty is right. We should not go into an investigation with the preconceived idea that we are going to refute a given claim. But, being human, with years of experience of encountering similar claims that turn out to be bogus, we sometimes do. That is one of the human aspects of science that does make it a belief system.

Doherty is also right that sometimes we skeptics react "uncharitably" to some claims and claimants. All I can say in our defense is that when the hundredth person calls with a perpetual motion machine or a theory that explains absolutely everything in the universe, it is damned hard not to chortle a bit.

Michael Shermer
Publisher, Skeptic
Altadena, CA

Brian Doherty replies: Correction noted on the title of Mr. Shermer's magazine, and my apologies for the error. My point about the tale of hallucinated alien abduction was not that he was necessarily lying, but that application of his Humean maxim might lead one to leap to that conclusion without a thorough check of the evidence. Sometimes, the seemingly improbable can turn out to be true.

Video Violence

By Michael W. Lynch

When a videotape of inmates being beaten by prison guards in a privately run Texas prison leaked to the press in September, critics of privatization thought they had been handed a smoking gun. The brutal beatings were delivered to Missouri inmates doing time in Texas because the Show Me State's prisons were packed beyond capacity. The media howled, Missouri canceled its contract with Brazoria County, Texas, and repatriated its prisoners, and more than 100 lawsuits were filed by prisoners against Capital Correctional Resources Inc. (CCRI), the company in charge of the prison. (See "Prisoners' Dilemma," November 1997.)

Although the press has moved on, this story hasn't ended. After reviewing the entire tape, a federal district judge threw the first case to come up out of court. The reason? All but seven seconds of the brutality revealed by the tape was delivered not by employees of CCRI but by Brazoria County sheriff's deputies.

CDA II

By Jacob Sullum

Enough is enough, says Donna Rice Hughes, captured on film in presidential candidate Gary Hart's lap aboard the naughty ship *Monkey Business*. Back then Rice Hughes apparently had no problem with adultery, but she now draws the line at dirty pictures. As spokeswoman for the aptly named group Enough is Enough, she supports a bill introduced by Sen. Dan Coats (R-Ind.) that aims to protect the youth of

America from this peril.

Coats, you may recall, was a co-sponsor of the Communications Decency Act, which the Supreme Court unanimously overturned last June in *Reno v. ACLU*. He says the new legislation is "narrowly tailored to meet the concerns of the Court."

Unlike the CDA, which imposed a blanket ban on "indecent" communications that might be seen by minors, this bill prohibits "commercial distribution on the World Wide Web of material that is harmful to minors." Material is deemed harmful if, "taken as a whole and with respect to minors," it "appeals to a prurient interest in nudity, sex, or excretion"; it depicts or describes excretion, sexual activity, or "a lewd exhibition of the genitals" in "a patently offensive way with respect to what is suitable for minors"; and it "lacks serious literary, artistic, political, or scientific value."

A commercial Web site would be permitted to display such material only to someone who first supplied a credit card number or other proof of age. Violators would face a prison term of up to six months and fines of up to $50,000 a day.

As with the CDA, critics of the bill argue that it would have a chilling effect on speech, since Web site operators would have difficulty predicting which material might be targeted by prosecutors. The ACLU warns that the "harmful to minors" definition could cover online bookstores such as Amazon.com or promotional sites for Hollywood movies.

"This is the equivalent of having to pay a fee every time you want to browse in the bookstore or watch a trailer for an R-rated movie," said ACLU attorney Ann Beeson. In *Reno v. ACLU*, she added, the Supreme Court recognized that requiring proof of age "would impose a severe financial and logistical burden."

ACLU attorney Chris Hansen scoffed at the idea that Coats's new bill would pass muster with the Supreme Court. "Senator Coats is confident this is constitutional," he told the *San Francisco Chronicle*. "Then again, he thought the CDA was constitutional, too."

Balance Sheet

By Rick Henderson

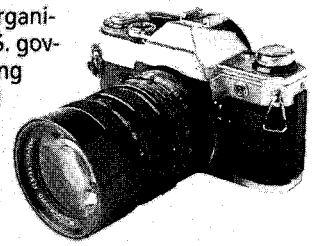
ASSETS

△

▲ Party On. Happy New Year: The "Misery Index"—the inflation plus unemployment rates—sinks below 7 percent, its lowest level in three decades.

▲ Taxachusetts, RIP? Massachusetts will elect a governor in November, and the tax-cutting party started by Bill Weld goes bipartisan. Gov. Paul Cellucci (the Republican front-runner) signs Americans for Tax Reform's pledge to never raise taxes and vows to cut the income tax rate from 5.95 percent to 5 percent. Cellucci's probable opponent, Democratic Attorney General Scott Harshbarger, pushes a $1.5 billion tax cut based on lower rates and higher personal exemptions.

▲ Rules Rule. The World Trade Organization rejects a suit filed by the U.S. government for Eastman Kodak alleging that Japanese bureaucrats and Fuji conspire to keep foreign film companies out of Japan. Consumers win, as the WTO decision keeps the United States from imposing tariffs or other trade sanctions.



▲ Motion Sickness. Congress temporarily puts OSHA micromanagers on hold. Legislators cut off funding for the implementation of squishy new "ergonomics" regulations that could have given OSHA power to redesign most of the nation's work sites. Besides eliminating ergonomics money from OSHA's budget, Congress stops the agency from enforcing any ergonomics cases against companies this fiscal year.

Death of a Town

By Brian Doherty

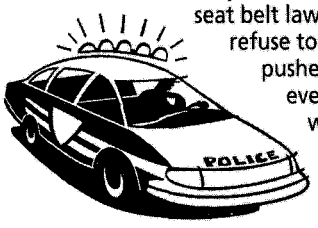
They're really dedicated to shrinking government in Russell County, Virginia—shrinking it right out of existence.

The coal-mining town of Castlewood, population 2,800, formally voted itself into oblivion in November, by a 749–622 vote. The town was created out of unincorporated county land six years

▼ Child Abuse. Requesting additional tax dollars to fight AIDS, Bill Clinton falsely invokes "the children." "HIV is affecting more and more young people," the president says. In fact, over the past year the Centers for Disease Control and Prevention note a 13 percent drop in AIDS cases among pre-teens.

▼ Riling Rosie. In its alarmist campaign against the fat substitute Olestra, the Center for Science in the Public Interest deceptively enlists talk-show host Rosie O'Donnell. When O'Donnell turns down the chance to make commercials promoting Frito-Lay's Olestra-laden "Wow" chips, a CSPI press release states she did so because she thinks Olestra is unsafe. Not true, says O'Donnell's agent. She just decided not to take the offer.

▼ Choke Hold. Every state but New Hampshire has mandatory seat belt laws. But about a third of drivers refuse to buckle up. The White House pushes states to make seat belt laws even tougher: It may withhold highway funding if states refuse to set up random motorist stops or upgrade seat belt violations from mere traffic offenses to misdemeanors.



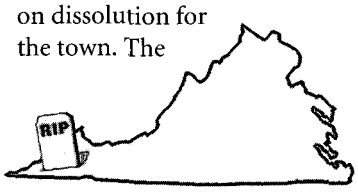
▼ Slaying Tigers. South Korea's "bailout" by the International Monetary Fund is, ironically, a Buchananite's dream. The higher taxes, government "investment" (read: spending), and heightened financial regulations attached to the IMF's dollars will choke off South Korea's market for exports and imports. Will the IMF soon offer similar "help" to Indonesia?

LIABILITIES

ago. The residents were aswim in promises of new sewer systems and new industry.

Instead, they got new taxes—real estate taxes, utility taxes, hotel taxes, meal taxes. When residents got the bill for the new taxes that came with the new township—around $400,000 last year—they rebelled. Last spring they elected a mayor and town council dedicated to eliminating their own jobs, and the town itself.

The new town government began refunding $88,000 worth of taxes and spearheaded the referendum on dissolution for the town. The vote now has to be ratified by a county judge and the state legislature.



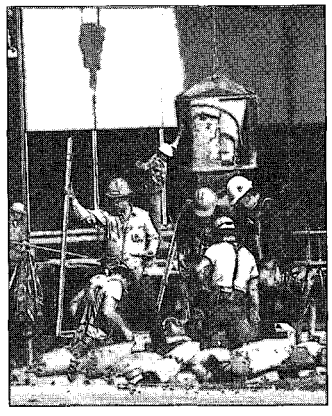
While Castlewood was small in population, its 8,900 acres of mostly pasture land made it Virginia's second largest city in area.

Houston Has Some Problems

By Nick Gillespie

Last November, residents of Houston voted down Proposition A, a ballot initiative that would have ended a set-aside program designed to give about 20 percent of municipal contracts to companies owned by women and racial or ethnic minorities. By a margin of 54 percent to 46 percent, voters said no to Prop. A, which read, "Shall the charter of the city of Houston be amended to end the use of affirmative action for women and minorities in the operation of city of Houston employment and contracting, including ending the current program and similar programs in the future?"

Although one might assume that the voters' decision is final, the backers of Prop. A are taking their fight to court. That's because the wording voters encountered on November 4 was markedly different from the language used to collect the 20,000 signatures necessary to get the proposition on the ballot. The original version of Prop. A borrowed heavily from the successful California Civil Rights Initiative, which itself leaned on 1960s civil rights legislation: "The city of Houston shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment and public contracting."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After Prop. A qualified for the ballot, Houston's city council rewrote it, citing a state election code that allows the rewording of initiatives; in justifying its action, the council also noted it had changed the wording of five of the last seven ballot ▶

QUOTES

"It would be nice if there were a simple solution to this quandary—nationalize Windows? break up Microsoft?—but there isn't."
—Andrew L. Shapiro in the December 8, 1997, issue of *The Nation*, writing about federal antitrust action against Microsoft.

"This case...is about a fundamental principle in our economic system: open and free competition. When a dominant company artificially dictates how, where and even if consumers have choice in the online marketplace, it is time for the government to step in and enforce the antitrust laws."
—Just-a-man Bob Dole (whose law firm, according to his credit line, just happens to represent "a number of software companies") in a widely syndicated column.

SOURCE

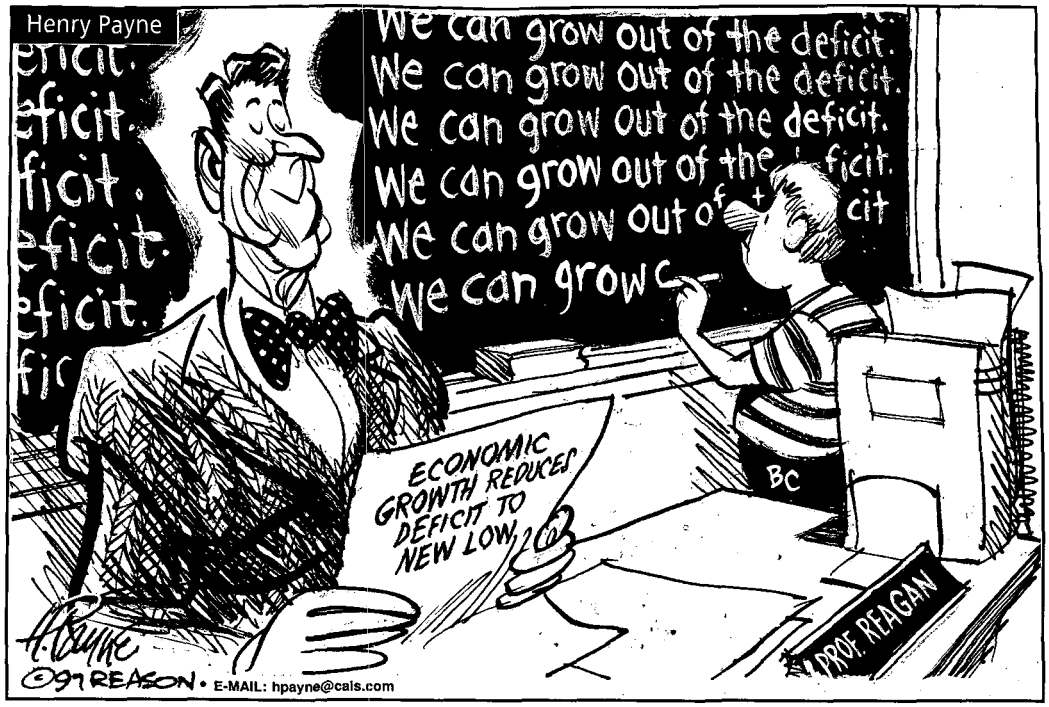
"While greenhouse effect theory is a relatively uncontroversial issue in the scientific sense, global anthropogenic [human-induced] climate change theory is at a much younger stage of development....Findings which support or oppose the central tenets of global anthropogenic climate change theory still appear regularly on the pages of leading science journals."
—"A Plain English Guide to the Science of Climate Change," by Kenneth Green, director of environmental studies at the Reason Public Policy Institute (www.reason.org/climateintro.html).

BRICKBATS

◆ **Malvin Marshall was taken to a hospital in North Carolina. Some powder was found in his pants pocket. Marshall said the powder was the remnants of vitamin tablets he'd accidentally left in his pants when he ran them through the wash. But the police were called, and they ran tests that said the substance was heroin. Marshall was arrested. Later, more-sophisticated tests showed that the powder was indeed vitamins. By then Marshall, who couldn't afford bail, had spent six weeks in jail.**

◆ **From our military intelligence department comes word that the military has weapons so secret that they can't be used. One Gulf War commander told *Aviation Week & Space Technology* that he was told a weapon was available that could help him win the war. "When I asked what it was, they'd say, 'I can't tell you,' or 'I can't reveal the effects,' or 'I can't tell you how it would work with other systems.'" Rather than use weapons they couldn't understand, the commanders told them to go to hell.**

◆ **California resident Judy Ann Petty is fighting to keep her personalized license plate. It reads "RAPNJAP" and is a sign of devotion to her husband Robin Arnett Petty. For 11 years she's had the plate and had no problems. But recently, a Japanese-American police officer saw the plate while on patrol and had his lawyer file a complaint with the Department of Motor Vehicles. The DMV says the term "Jap" is offensive to Japanese and has ordered Petty to give up the plate.**


Henry Payne
We can grow out of the deficit.
We can grow out of the deficit.
We can grow out of the deficit.
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We can grow out of the deficit.
We can grow
ECONOMIC GROWTH REDUCES DEFICIT TO NEW LOW
BC
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propositions. The chief proponent of Prop. A, businessman Edward Blum, charged the council had "sabotaged" the proposition and sued to put off the election until his original wording was restored.

Prior to the elections, however, a state district judge ruled he had no jurisdiction to stop the vote, since absentee voting had already begun. A three-judge panel upheld that finding after the election. Blum has filed an amended petition in a state district court asking that the Prop. A vote be nullified and a new election be held using his original language. The case is expected to get under way in early 1998.

Free Speech Takes a Hit

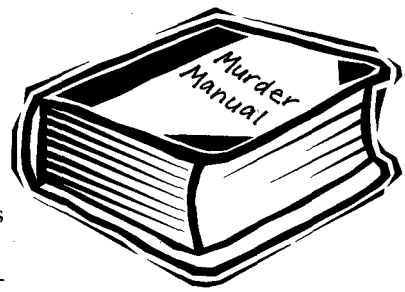
By Brian Doherty

Some books aren't speech at all, says a November decision by a three-judge panel of the U.S. Court of Appeals for the Fourth Circuit in Richmond.

Survivors of three victims of a murder-for-hire scheme are attempting to sue the Paladin Press, the publisher of a book called *Hit Man* (pseudonymously authored by "Rex Feral"), allegedly used as an instruction manual by the murderer. Paladin got the case thrown out on First Amendment grounds by a lower court, but now is told on appeal that the book does not deserve First Amendment protection since it constitutes "criminal aiding and abetting."

Some of Paladin's stipulations may have aided and abetted the judges who ruled against it. Paladin granted that it knew some of its readers might be murderers or would-be murderers and might use the instructions to commit crimes. But Paladin's knowledge that its book might be used by criminals, says the publisher's lawyer Thomas Kelley, is "certainly something that can be shown of *any* publisher who publishes what could be used as how-to information. A documentary on how Pan Am 103 was sabotaged would be of interest to terrorists doing the same thing." Perhaps in recognition of this principle, a number of more mainstream publishers, including *The Washington Post,* filed amicus briefs on Paladin's behalf.

Even granting that Paladin knew crooks would use the book, Kelley says Paladin should escape the suit under the protections enshrined in the 1969 Supreme Court case *Brandenburg v. Ohio,* which granted wide protection to speech that advocates lawbreaking. Kelley's petition to have the case thrown out by the full Fourth Circuit points out that the Supreme Court has applied *Brandenburg* protection to such things as ads detailing how to buy and use



contraceptives in places where that was illegal. But the appellate panel said *Brandenburg* protections don't apply to *Hit Man* because it is not "abstract advocacy of lawlessness," but instead provides specific factual information on how to commit crimes.

If the Fourth Circuit refuses to rehear the case, Kelley says, he intends to appeal to the Supreme Court.

Building Bridges

By Michael W. Lynch

Only a few months into the five-year balanced budget deal, Washington's politicians are already proposing new spending. In late October, Sens. Phil Gramm

(R-Texas) and Joe Lieberman (D-Conn.) introduced the National Research Investment Act of 1998, which would double the research and development budgets of 12 federal bureaucracies, including the Departments of Education, Agriculture, and Energy, along with the Environmental Protection Agency.

"President Clinton has talked about building a bridge to the 21st century and, our philosophical differences aside, I want to help him build that bridge," intoned Gramm upon submitting the bill. Gramm would construct that metaphorical bridge with real dollars, doubling the $34 billion that the federal government will spend on basic R&D in 1999 to $68 billion in 2008.

The bill has been referred to the Senate Labor and Human Resources Committee, where it is not expected to receive immediate attention. To date, there is no companion bill in the House, although the science theme promises to be popular with politicians eager to deliver federal largess to their constituents. Testifying before the House Budget Committee in October on what to do with a budget surplus, Speaker Newt Gingrich said, "We have to be prepared to invest in science."

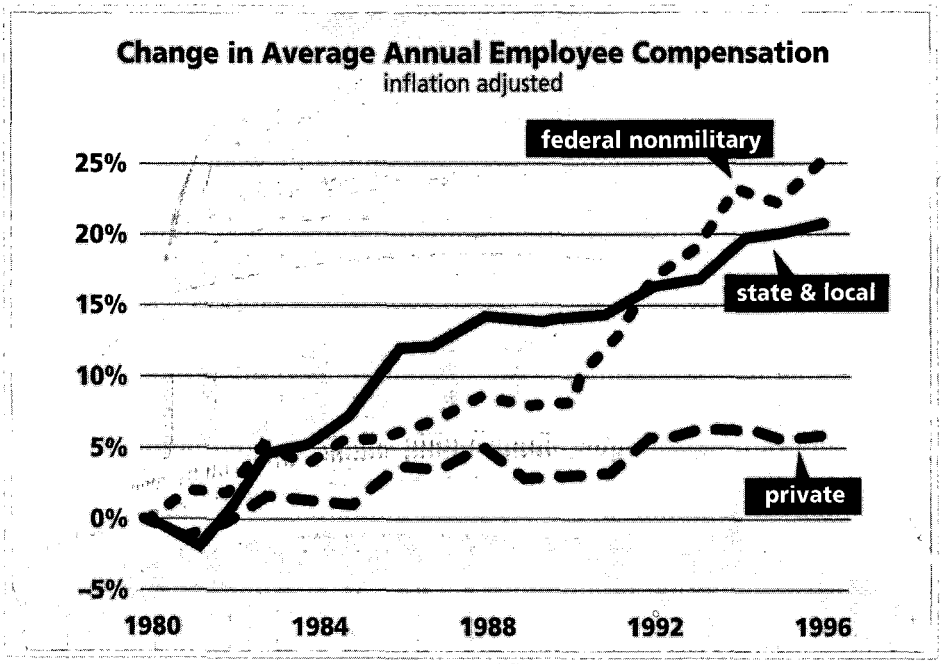
DATA

Keeping Ahead of the Joneses

By Adrian T. Moore

If you wonder why the government has such a hard time cutting spending, take a look at the new car in the driveway of the bureaucrat down the street. While private sector workers have seen their average annual earnings grow slowly but steadily over the past two decades, pay for government workers has skyrocketed. Economist Wendell Cox has discovered that since 1980, for every inflation-adjusted dollar of extra compensation (wages and benefits) the average private sector employee has earned, the average state and local government employee has received an extra $3.00. Over that same period, the average federal employee has taken home five times more in additional compensation than his private sector counterpart.

The average state and local government worker now earns over 30 percent more than the average private sector worker, while the average federal nonmilitary employee earns 50 percent more. Government employees have achieved these spectacular pay increases without much public notice. But that may change as unions and other organizations that represent government workers lobby to maintain their inflated salaries by leading the fight against privatization and the regulatory reforms necessary to make budget cuts. Cox's full analysis, derived from Department of Commerce and Bureau of Economic Analysis data, is available on the Web at The Labor Market Reporter, www.publicpurpose.com.



source: Wendell Cox

Don't Watch That!

By Michael W. Lynch

The national nanny may soon be baby-sitting your personal computer. In the Telecommunications Act of 1996, Congress mandated V-chips—designed to block television programming based on a system of ratings —for any "apparatus de- ▶

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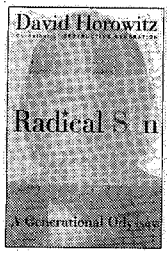

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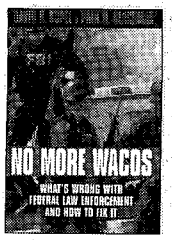

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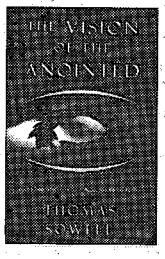

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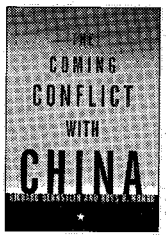

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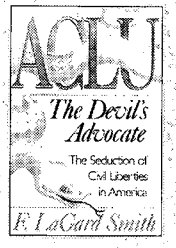

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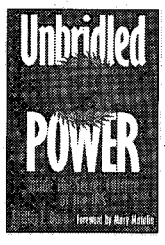

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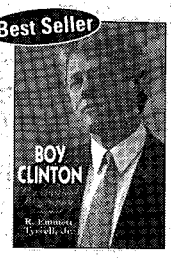

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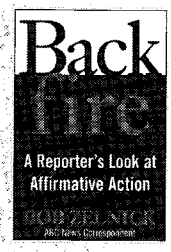

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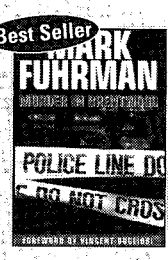

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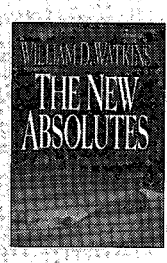

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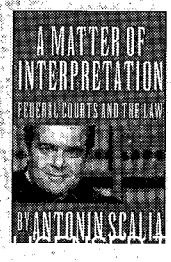

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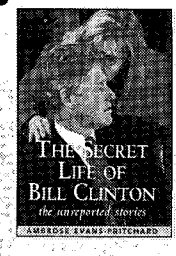

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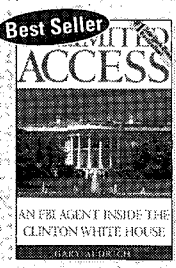

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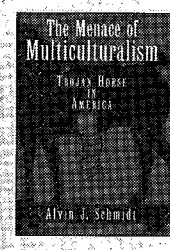

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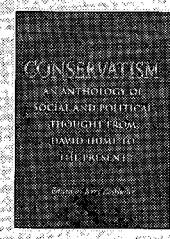

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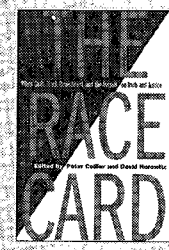

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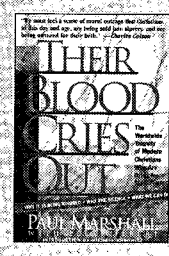

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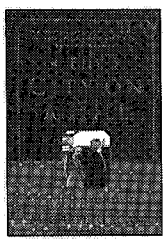

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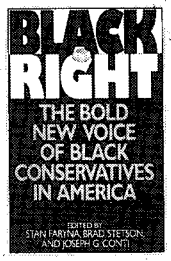

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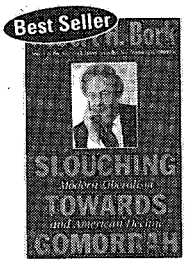

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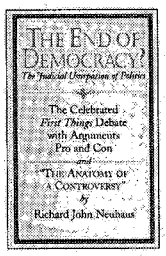
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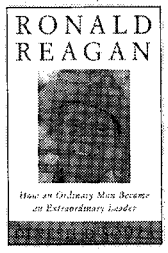

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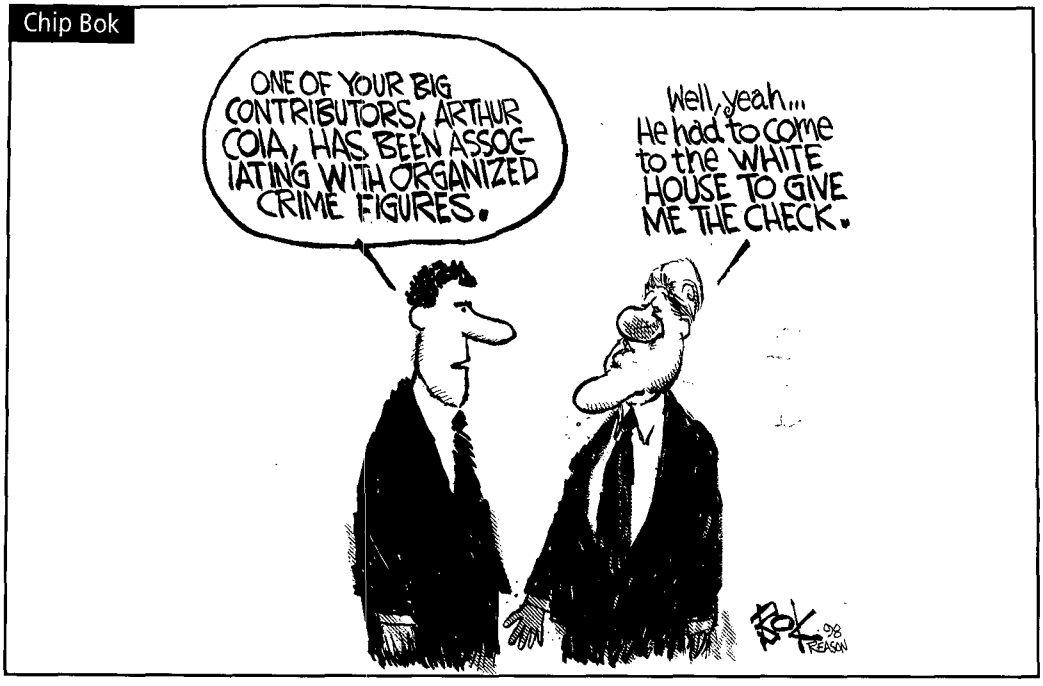
BRICKBATS

◆ In Oregon, the state Supreme Court unanimously ruled that a white man who got punched by a black co-worker for making repeated racist remarks is entitled to worker's compensation for his injuries.

◆ Tennis player Steffi Graf says she quit the Roman Catholic Church for "personal reasons." But others say that she could have been one of the thousands of Germans who have left their churches to save on taxes. Since the days of the Weimar Republic, Germany has collected a tax from members of organized religion to fund those churches. Only members of unrecognized faiths, such as Islam or Scientology, are exempt. The tax is now 8 percent or 9 percent of a person's income. But those who aren't members of a church don't have to pay, prompting many to leave their churches.

◆ The Bakersfield, California, Business Conference held a symposium to discuss the Internal Revenue Service. Among the invited speakers were Reps. Dick Armey (R-Texas) and Billy Tauzin (R-La.), two critics of the agency. This apparently didn't sit well with one local IRS worker. He faxed a letter, on IRS stationery, to the sponsors of the event. It said that it would be "inappropriate" to have Tauzin and Armey speak. Upon hearing of the letter, an IRS spokesman said the worker acted without authorization, but refused to say if the employee would be punished.

Chip Bok


ONE OF YOUR BIG CONTRIBUTORS, ARTHUR COIA, HAS BEEN ASSOCIATING WITH ORGANIZED CRIME FIGURES.
Well, yeah... He had to come to the WHITE HOUSE TO GIVE ME THE CHECK.
BOK '98 REASON

signed to receive television signals...and that have a picture screen 13 inches or greater in size."

While this language clearly requires V-chips in PCs that double as televisions, the Federal Communications Commission is stretching the statute to cover computer monitors that weren't intended to carry *Seinfeld* reruns. An FCC regulation proposed in late September states: "We believe that the program blocking requirements we are proposing should apply to any television receiver meeting the screen size requirements, regardless of whether it is distributed only through cable television systems, MDS, DBS, or by some other distribution system." The "other distribution system," of course, is the Internet, which is already being used by entrepreneurs to transmit Webcasts.

A mandatory blocking scheme based on ratings would require some type of central authority to draw up those ratings; thus far, the freewheeling Internet community has resisted such top-down management.

The public comment period for the proposed rules ended in early December and the FCC intends to pass final regulations soon. Under its self-imposed timetable, the agency will require half the "eligible" monitors shipped by July 1, 1998, to include the chip; one year later, every set will be covered.

Privatizing National Greatness

By Michael W. Lynch

While such leading conservatives as *Weekly Standard* Publisher Bill Kristol may be asking the government to somehow restore national greatness, the federal government is in fact looking to the private sector for help.

At Gettysburg National Military Park, the visitor center is so rickety that some soldiers' uniforms and weapons get a washing with each rain. To rectify this, the National Park Service is negotiating with a private firm to build and operate a new visitor center, bookstore, Imax movie theater (which would show National Geographic Society films), restaurant, and parking facility.

The $40 million in privately financed facilities would be built on private land within the boundaries of the park and operated by a nonprofit corporation. Under the proposed plan, which may not be finalized until the middle of 1998, both the land and the buildings will be donated to the Park Service after the debt is retired.

Private concessions are not new to national parks—hundreds of park concessionaires take in just under $700 million a year—but they are more common in the Western states than in the East, which may explain some of the opposition the plan has stirred.

Walter Powell, president of the Gettysburg Battlefield Preservation Association,

opposes the partnership, telling *The Washington Post* it is a "travesty." The National Trust for Historic Preservation and the National Parks and Conservation Association, however, tentatively support the venture.

For its part, the Park Service—which sees such partnerships as a means to deliver high-quality services—views Gettysburg as a test case. "If you want to balance the budget and pay less taxes, how do we build a new visitors center?" asks spokesman Dave Barna. "We think we have a solution."

Disrespecting Elder

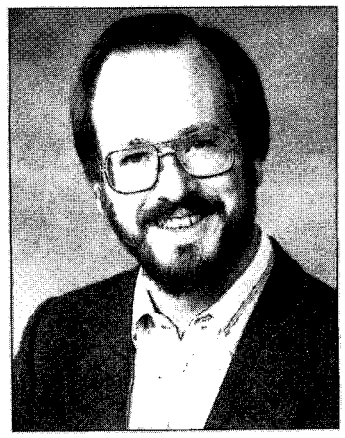
By Rick Henderson

He has earned solid ratings with the prospect of national syndication, a favorable profile on *60 Minutes*, and a regular gig as a pundit on CNBC's *Charles Grodin* program. But those achievements may not keep "the Sage of South Central," libertarian radio talk show host Larry Elder, from losing his job. (See "Elder Statesman," April 1996.) On November 17, Los Angeles station KABC cut Elder's daily program—which in October had the second-highest ratings of any show in the lucrative afternoon drive market—from four hours to two. KABC said it brought in journeyman left-liberal host Ed Tyll to split the afternoon drive shift with Elder to give listeners something different. But it looks a lot like the station is cowering under pressure from a group of race-baiting radicals.

In the spring of 1996 the secretive Talking Drum Community Forum, a group of perhaps 30 Afrocentrists, started leafletting South Central neighborhoods with personal attacks on Elder (one handbill read "Wanted: White Man's Poster Boy—Dead. Bring Head to South Central") and picketing merchants that advertise on the program. Especially vexing to Talking Drum are Elder's assertions that individuals of all races are responsible for their own actions and that many African Americans seem too willing to blame their woes on lingering racism. Talking Drum also started writing letters to national advertisers on *The Larry Elder Show*, and more than a dozen of them—including American Airlines, J.C. Penney, Sears, Ford, and Motel 6—pulled an estimated $3 million in advertising from the program. ▶

SOUNDBITE

Taking Economics Personally



In *The Armchair Economist* (1993) and his "Everyday Economics" column in *Slate*, University of Rochester professor Steven E. Landsburg translates abstract economic theory into concrete insights that often undermine the moral and utilitarian righteousness of all sorts of do-gooder intrusions into daily life. REASON Assistant Editor Brian Doherty recently spoke with Landsburg by phone about his new book, *Fair Play: What Your Child Can Teach You About Economics, Values, and the Meaning of Life*.

Q: You point out that adults accept government policies—such as progressive taxation—whose moral principles they would rebel against if applied to their children's playground. Why the double standard?

A: Most people are not terribly interested in thinking hard about abstract moral questions. When you go into a voting booth, your chances of affecting the outcome are essentially zero. There's just no real reason for most people to give a lot of thought to moral issues in a public context. People think harder about right and wrong when raising their own children, where they have more of a stake and influence.

Q: You often reach counterintuitive conclusions that many people find hard to swallow, such as the idea that more people on the planet are generally a boon. Why do people have a hard time grasping your points?

A: The bottom line on all of this is: Most people don't find it in their interest to think very hard! That particular wrong conclusion has its root in people's tendency to take things like technology for granted and not to think through the extent to which we rely on other people for improvements in living standards, technologies, and the quality and quantity of goods available to us. People take for granted the interactions they have with others. When they imagine cutting population, it's always all those people they don't care about who they imagine disappearing. But of course those they care about and depend on would be among those who went.

Q: You discuss how a colleague's mathematical equations made you think hard about your view that progressive taxation is a bad thing. Can math trump moral positions?

A: When I found the calculations working against my value position, I felt an obligation to think much harder about exactly what moral assumptions went into my colleague's calculations. One must not be fooled into thinking something is more objective than it is just because it's expressed as an equation. But it's easy to make arguments in English that sound consistent and are still inconsistent in subtle ways. The only ways to avoid that pitfall are translation into math and the scrutiny of critical colleagues, and every argument in *Fair Play* has been submitted to lots of both.

BRICKBATS

◆ From Tel Aviv comes word of some interesting "roommate wanted" ads placed on bulletin boards throughout the city. They were written on the back of top secret military documents. Seems a woman who worked in one of Israel's most sensitive intelligence units was looking for someone to share her apartment. She grabbed what she thought was some blank paper to make ads, and didn't notice the writing on the back or the label "Top Secret."

◆ In Hollywood, Florida, six veteran police officers were suspended from the SWAT team after getting kicked out of a training session at a military post. The six were sent there to learn new techniques to fight drug dealers. They came back to the post one evening smelling of alcohol. The errant officers were ordered out of their vehicle and told to walk to their barracks. Later, three of them broke into a supply building and got into a paintball fight. All six were ordered off the base before the training session even began.

◆ Coming soon to a Web site near you: federal anti-discrimination law. The World Wide Web Consortium, which sets Web standards, is looking at ways to make the Internet more friendly to the deaf and the blind. These handicapped-friendly standards may not be voluntary. The director of the project says the standards might be used by government to force Webmasters to make their sites handicapped-accessible.

—Charles Oliver

Scott Stantis

Talking Drum rarely makes its case in an open forum—the group refused to talk with *60 Minutes*—but in a telephone interview with Jill Stewart of the weekly *New Times Los Angeles*, a member identifying himself as "Thutmos Turner" contended that the only reason Elder was given a show in the first place was due to a Jewish conspiracy against blacks led by Disney CEO Michael Eisner. (Disney had purchased KABC in 1996.)

Elder has garnered support from the conservative Center for the Study of Popular Culture, which raised more than $350,000 to run pro-Elder ads on L.A. cable outlets, and from Project Larry Elder, an ad-hoc group of Elder fans and civil rights leaders who may disagree with Elder's positions but take umbrage at Talking Drum's tactics.

As the controversy continues, Elder soldiers on. "I would be lying if I said I was happy about" having the show cut back, he says. But at press time he says "there are only a few details remaining" before he signs with a national syndicator for his program. And Elder will begin writing a weekly national newspaper column for Creators Syndicate in February.

Profiles in Secrecy

By Brian Doherty

Josh Mangum was checking in for his boarding pass at the gate in San Francisco airport in August. He had purchased his ticket over the Net. Mangum, a computer programmer recently graduated from Stanford, is dark-complexioned and hadn't shaved that day. He looked, by his own self-description, "like a picture of a terrorist."

The gate attendant called up Mangum's information. He then told Mangum that he must have his carry-on bag hand-searched by an agent (he'd already gone through the typical X-ray machine) before he could get his boarding pass. Mangum reluctantly agreed. He was handed a form letter absolving the airline, Southwest, of any responsibility for this search. The letter said he should direct questions to a regional Federal Aviation Administration administrator.

Airlines and the FAA are known to use each other as cover for their own actions, as in the recent policy of requiring picture ID to board a plane. The FAA says Mangum was likely a victim of a security technique known as "profiling," which singles out certain types of people, for certain reasons, for special treatment. What types? What reasons? The FAA won't say.

"I can't talk about exactly what the criteria are since it tells terrorists and criminals what we're looking for and

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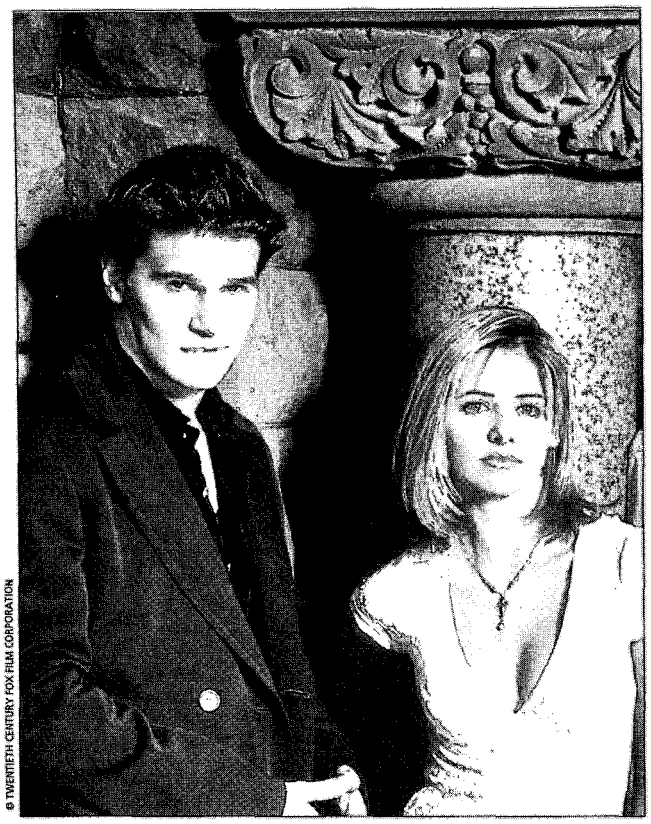
ARTIFACT



Slaying Fate

Buffy the Vampire Slayer, protagonist of the eponymous TV series, is destined by birth to stand alone against the forces of evil—vampires, demons, and such—while juggling such high school horrors as cheerleading tryouts, career day, and a really nasty principal. While coolly dispatching the undead, she maintains a fashionably hideous wardrobe (this is the *Brady Bunch* of the '90s), good hair, and a line of patter heavy with teen argot.

The well-crafted show, a hit among teenagers, is often a meditation on the tension between fate and choice. In a world of contract, Buffy is governed by status; while her friends can choose their paths, she must be the slayer. She does it her way, breaking every rule in the *Slayer Handbook* (including the one about not dating even good vampires, such as the heartthrob to the left) and adding imagination to skilled fighting technique. When a second slayer turns up, destiny suddenly becomes choice: "I wonder if it would be so bad being replaced....I could say, 'Kendra, you slay. I'm going to Disneyland.'"

Choice confirms fate—she'd never leave her post. Slaying suits Buffy, as long as she can reshape that fate to fit the rest of her. An interesting theme to imbibe at the dawn of the biological century.

—Virginia Postrel

might help them elude the system," FAA spokesperson Rebecca Trexler says. To assuage any shame people like Mangum might feel, she added: "Selection doesn't mean you are a terrorist. It just means we don't know enough about you. We target time-consuming search procedures with intelligence."

What sort of intelligence? "It doesn't involve race, religion, national origin, or ethnicity and has nothing to do with the way they look," Trexler assured me.

This almost makes profiling sound completely random, but Trexler wouldn't say that either, since that would make it sound unintelligent—a random system couldn't be presumed to effectively isolate baddies. She also referred to a recent Department of Justice civil rights investigation that absolved the FAA of the sin of concentrating on verboten, civil-rights-sensitive features.

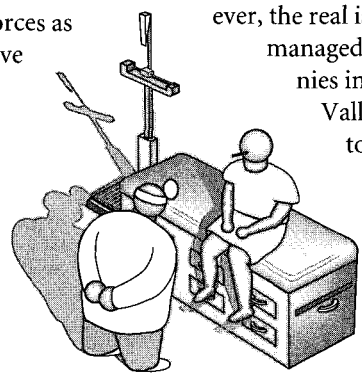
Indeed, on October 1, DOJ issued a press release confirming that it had done a study proving the FAA did not "give any consideration to the race, color, national or ethnic origin, religion or gender of airline passengers." Wanting to see the details behind the press release's sweeping assurance, I asked for a copy of the full report. Sorry, DOJ spokesman John Russell said. That report is not a public document.

Sorry Doc

By Michael W. Lynch

Before agreeing to cooperate in business ventures, Americans are well advised to ask permission from their overseers in Washington. Last year, when Staples and Office Depot thought of merging, the Federal Trade Commission said no, using the novel theory that firms which constitute 6 percent of the market could wield monopoly power. (See "No Deal," October 1997.)

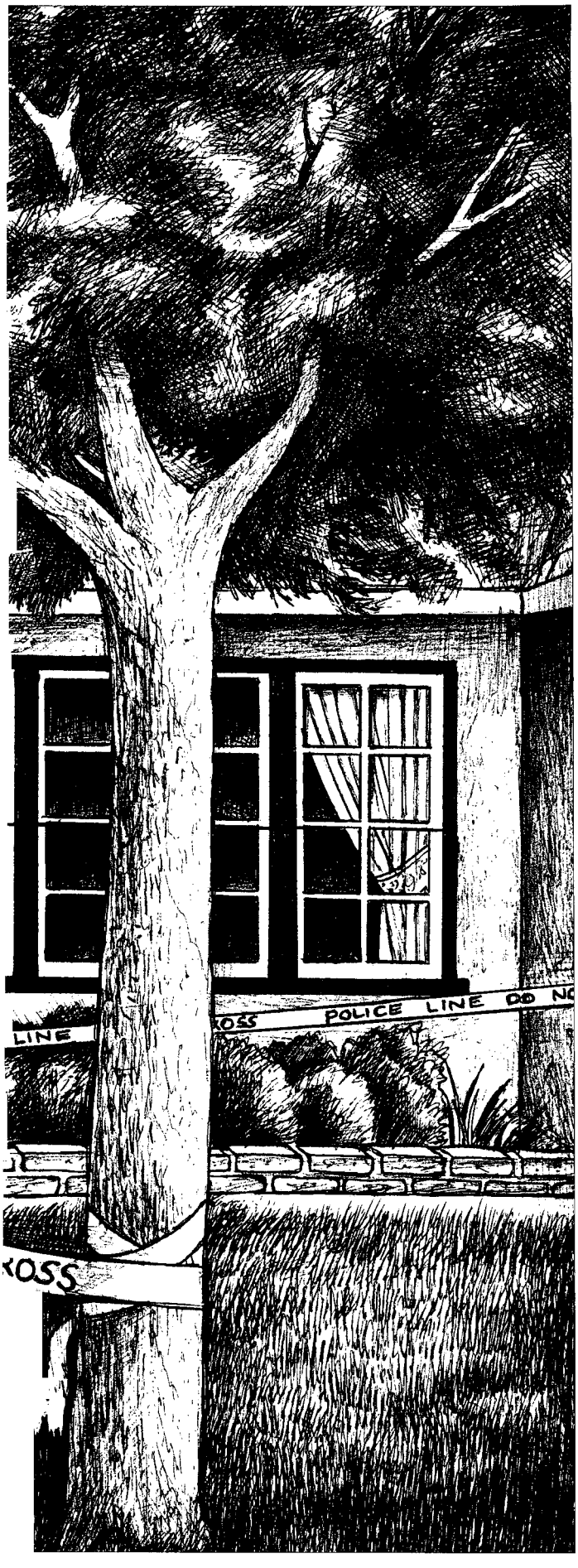
But office superstores aren't the only businesses under the scrutiny of antitrust busybodies. Last July the Department of Justice informed a group of gastroenterologists in eastern Pennsylvania who wanted to merge their practices that it would view their efforts to combine forces as anticompetitive and therefore couldn't promise "that it would not take enforcement action against the merger."



In asking permission to start a new business, the 12 docs pointed out that there were 21 other gastroenterologists in the Greater Lehigh Valley. But citing the Lehigh River as an insurmountable "psychological barrier," Joel Klein, then acting assistant attorney general of the Antitrust Division, redefined the market these doctors operated in to include only Allentown, thus boosting their market share to 92 percent.

As Klein's letter to the 12 physicians makes clear, however, the real issue is that managed care companies in the Lehigh Valley didn't want to have to negotiate with the new firm. Thanks to the Department of Justice, they won't have to.

POLICE LINE DO NOT CROSS
POLICE LINE DO NOT CROSS
POLICE LINE DO NOT CROSS
WELCOME



ILLUSTRATIONS: FRED SMITH

Domestic VIOLATIONS

To punish spouse abuse, the law runs roughshod over common sense and the rights of both women and men.

In the fall of 1996, Susan Finkelstein's live-in boyfriend was arrested and charged with abusing her. Today, Susan, a 31-year-old free-lance editor in a small Midwestern town, feels that she was abused by the justice system. "I felt so helpless," she says. "I had no rights. Nobody listened to me, nobody wanted to hear my story."

The tale sounds familiar enough—except that what angers Susan is not that her boyfriend was treated too leniently but that he was prosecuted at all.

It all started when Susan and her boyfriend, a 44-year-old college administrator whom I'll call Jim, were having a heated argument on the way home from a party. Both of them, Susan explains, were under a great deal of stress. The quarrel escalated, and Jim decided it would be best to pull over. He wanted to get out of the car and walk, and Susan tried to stop him. "I lost my temper, he lost his temper, and we got into a mutual scuffle," she says. "I may have scratched him, he may have pushed me. It got physical, but there certainly wasn't any beating."

Finally, they cooled down and got back on the

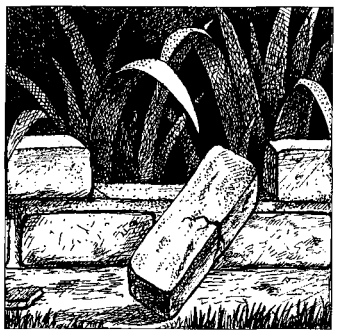
BY CATHY YOUNG

road—only to be stopped by a police car. Susan remembers thinking that Jim might have been driving erratically during the fight and might have looked like a drunk driver. But it was something very different. A passing motorist had seen their altercation, written down their license plate number, and called the police.

Despite Susan's assurances that Jim hadn't hurt her and she wasn't afraid of him, he was handcuffed and taken away. Under department policy, an officer told her, they had to make an arrest in a domestic dispute. Says Susan, "I was very upset that they wouldn't listen when I said that I was fine. They said, 'Well, we know that women who are abused often lie out of fear.'"

After spending the night in jail, Jim was arraigned on a misdemeanor charge of domestic violence and prohibited from having any contact with Susan, who had to stay with a friend. Her efforts to convince the judge and the prosecutor that nothing had happened were fruitless.

On a lawyer's advice, Jim pleaded no contest. He had to write a letter of apology to Susan (which he wrote in her presence and mailed to the district attorney's office, which forwarded it to her) and attend 10 weekly counseling sessions for batterers, a three-hour drive away, at a cost of $400. He is acutely aware that his record puts him at risk: "If Susan and I have a loud argument and a neighbor calls the police, I'll be arrested immediately," he says.



Like many crusades to stamp out social evils, the War on Domestic Violence is a mix of good intentions, bad information, and worse theories. The result has been a host of unintended consequences that do little to empower victims while sanctioning state interference in personal relationships.

What happened to Jim and Susan—who are still together as a couple—is not an aberration. It's just another story from the trenches of what might be called the War on Domestic Violence. Born partly in response to an earlier tendency to treat wife-beating as nothing more than a marital sport, this campaign treats all relationship conflict as a crime. The zero-tolerance mentality of current domestic violence policy means that no offense is too trivial, not only for arrest but for prosecution. Consider these recent examples:

In 1996, Seattle City Councilman John Manning, who came home one day and was shocked to find his wife loading her things into a truck, was charged with assault for grabbing her shoulders and sitting her down on the tailgate (causing no injuries). He pleaded guilty to misdemeanor domestic violence, received a deferred prison sentence, and agreed to complete a treatment program for batterers. (The *Seattle Times* editorialized that the case gave "a public face" to the tragedy of domestic violence.)

The same year, Michigan Judge Joel Gehrke made headlines when he gave convicted spouse abuser Stewart Marshall a literal slap on the wrist, citing the wife's adultery with her husband's brother as a mitigating factor. This episode, which provoked cries about judges who go easy on wife beaters, should have raised questions instead about frivolous prosecutions. Aside from the fact that many of the jurors believed Chris Marshall had set up the incident as a leverage-gaining divorce tactic, Stewart's assault consisted of grabbing her by the sweatshirt and pushing her; she did not suffer a single scrape. A woman juror who backed Judge Gehrke's decision explained that the jury "had to say guilty" because "if you touch, it's battery."

In those cases, at least, the alleged victims wanted a prosecution. But increasingly, women who don't—like Susan Finkelstein—find their wishes ignored. This issue was brought into the spotlight by the 1996 Texas trial of football star Warren Moon, whose wife Felicia was forced to take the stand against him. In a less famous case in St. Paul, Minnesota, two years earlier, Jeanne Chacon, an attorney, tried not only to drop battery charges against her fiancé, Peter Erlinder, but to serve as his lawyer. Though Chacon herself had called the police and accused Erlinder of "slamming" her to the ground, she quickly changed her story: Abused as a child, she explained that she was prone to violent outbursts, and that Erlinder had merely restrained her with a "basket-hold" technique recommended by her own therapists. Her therapists corroborated her story, and Chacon had several violent episodes while the case was pending. Still, prosecutors insisted on going to trial—which, like the Moon case, ended in acquittal.

Like many crusades to stamp out social evils, the War on Domestic Violence is a mix of good intentions (who could be against stopping spousal abuse?), bad information, and

worse theories. The result has been a host of unintended consequences that do little to empower victims while sanctioning state interference in personal relationships.

The battered women's advocacy movement, which has led the campaign against domestic abuse, is heavily influenced by radical feminist politics and tends to frame the issue in terms of a male "war against women." The mission statement of the National Coalition Against Domestic Violence links "violence against women and children" to "sexism, racism, classism, anti-semitism, able-bodyism, ageism and other oppressions." Booklets funded by government and by charities such as United Way assert that "battering is the extreme expression of the belief in male dominance over women."

Such thinking is responsible for such widely circulated factoids as "domestic violence is the leading cause of injury to American women," "battering causes more injuries to women than car accidents, rapes, and muggings combined," or "25 to 35 percent of women in emergency rooms are there for injuries from domestic violence." These patently false numbers (data from the Justice Department and the Centers for Disease Control and Prevention suggest that less than 1 percent of women's emergency-room visits are due to assaults by male partners, and that about 10 times as many women are injured in auto accidents) are complemented by increasingly expansive definitions of abuse.

Thus, in her landmark book, *The Battered Woman* (1979), psychologist Lenore Walker writes that "a battered woman is a woman who is repeatedly subjected to any forceful physical *or psychological* behavior by a man in order to coerce her to do something" (emphasis added). While Walker focuses primarily on women who have been physically assaulted, she also talks about men "battering" their wives by, for example, being inattentive. Pamphlets distributed by family violence programs stress that one doesn't have to be hit to be abused and list such forms of abuse as "calling you names," "criticizing you for small things," or "making you feel bad about yourself." A booklet published by the state of New Jersey, *Domestic Violence: The Law and You*, informs the reader that she is a victim of domestic violence if she has experienced "embarrassment or alarm because of lewd or shocking behavior" or "repeated verbal humiliation and attacks."

These ideas have consequences. By 1982, largely due to lobbying by advocacy groups, a majority of states expanded police authority to make arrests in misdemeanor assaults which the officers had not actually witnessed—a move applauded by most law enforcement personnel and family violence researchers. But as the rate of arrest remained low, many states and jurisdictions began to go further and *mandate* arrests, a policy viewed with far more ambivalence. This trend has been boosted by the post–O.J. Simpson-trial attention to domestic abuse and by incentives for pro-arrest policies in the federal Violence Against Women Act of 1994.

Such policies have undeniably increased the number of arrests. It is far less clear, however, that they have had a significant impact on spousal abuse. Christopher Pagan, who was until recently a prosecutor in Hamilton County, Ohio, estimates that due to a 1994 state law requiring police on a domestic call either to make an arrest or to file a report explaining why no arrest was made, "domestics" went from 10 percent to 40 percent of his docket. But, he suggests, that doesn't mean actual abusers were coming to his attention more often. "We started getting a lot of push-and-shoves," says Pagan, "or even yelling matches. In the past, police officers would intervene and separate the parties to let them cool off. Now those cases end up in criminal courts. It's exacerbating tensions between the parties, and it's turning law-abiding middle-class citizens into criminals."

Many police officers agree—though all of those who were willing to discuss their misgivings asked that their names not be used, given the charged nature of the subject and their criticism of official policy. "We need domestic violence law but we need common sense, too," says a veteran small-town policeman in New Jersey. The officer stresses that he doesn't miss the days when a woman could be bruised or bloodied and you couldn't arrest the man unless she was willing to risk enraging him further by signing a complaint. But today, he says, the law has gone to the other extreme: "Sometimes the wife's begging, 'Don't arrest him, the kids are here,' and you *have to* arrest."

It's not just male officers who chafe at having their hands tied. A woman I'll call Sally Gilmore, a sergeant on the nearly all-male police force of a working-class New Jersey town, feels that mandatory arrest rules often force cops to act against their better judgment. She recalls responding to a quarrel between a woman and her ex-boyfriend, who had come over to pick up his things. After being told that he couldn't be arrested for shouting at her, the woman suddenly "remembered" that he had also hit her and pointed to a bruise on her leg. "I asked, 'When did this happen?' and she said, 'Just now,'" says Gilmore. "Well, this bruise was days old. He said he didn't hit her. I basically knew she was lying, but I had no choice."

The effects of mandatory arrest are compounded by no-drop prosecutions. The assumption behind no-drop policies is that when women recant or refuse to press charges, it is out of fear or dependence. But reality is far more complex. The woman may feel, rightly or not, that she is not in danger and can handle the situation better without the complications of a legal case; or the lines between aggressor and victim may be blurred; or the charge may have been false, made in anger, and later regretted.

A counselor with a family violence intervention program in Florida who generally favors no-drop prosecutions saw

this happen with her own daughter Angela—a troubled young woman with a severe drinking problem—and her live-in boyfriend. One evening, says the counselor, who also requested anonymity, an intoxicated Angela wanted to go out to buy more liquor: "Her boyfriend won't give her the money. So she goes out to the corner and calls the police saying he has locked her out—which he probably had because he didn't want trouble—and fills out a report saying he threatened her, she's afraid of him, and so on." The police took her home and arrested the young man. The next day, a now-sober Angela was appalled by what she had done and tried to back out—to no avail. With her mother's help, she hired a lawyer, and her boyfriend was eventually allowed to plead no contest.

These policies apply not only to violence between spouses or cohabitants. Shortly after Wisconsin's mandatory arrest law took effect, a Milwaukee mom was locked up for slapping her misbehaving teenage son. In 1996 in Missouri, a father was arrested and charged with assault because, after his 17-year-old son refused to get up early to mow the lawn, the father pushed the lawnmower into the teenager's room and started it up.

Curiously, battered women's advocates (and journalists who take their cue from the activists) continue to claim that police and the courts treat domestic abuse less seriously than non-family assaults. In fact, this may not have been true even prior to feminist-initiated reforms. In the 1992 book *Policing Domestic Violence*, University of Maryland criminologist Lawrence Sherman concludes that underenforcement of assault and battery laws was hardly unique to domestic violence. He cites data from the 1970s showing that police were reluctant to intervene in *any* violent personal dispute, be it a marital squabble, a neighborhood quarrel, or a bar brawl. All else (such as injury) being equal, the rates of arrest were similar for domestic and non-domestic cases. Certainly, more recent studies show no evidence of discrimination against battered women. Analyzing the handling of violent offenses in 1987–88 in Arizona, feminist criminologist Kathleen Ferraro found—to her own surprise—that while most attacks of any kind were either not prosecuted or were charged as misdemeanors, felony assaults were *less* likely to be dismissed if they involved spouses or partners (even though the victims in domestic cases were much more likely to request a dismissal). Nor did the victim-offender relationship affect the severity of the sentence.

Nowadays, however, some crusaders openly argue that domestic violence should be taken *more* seriously than other crimes. In 1996, the sponsor of a New York bill toughening penalties for misdemeanor assault on a family member (including ex-spouses and unwed partners) vowed to oppose a version extending the measure to *all* assaults: "The whole purpose of my bill is to single out domestic violence," Assemblyman Joseph Lentol said. "I don't want the world to think we're treating stranger assaults the same way as domestic assaults."

These arguments, however, are rooted in the paradigm of domestic violence promoted by the battered women's movement: the woman, powerless and trapped by economic or psychological dependency, is victimized by the brutal, domineering man who uses force to impose control. Certainly, some cases fit this model; but many others do not.

For one, the feminist paradigm ignores mutual combat and female aggression. Surveys by pioneering family violence researchers Murray Straus of the University of New Hampshire and Richard Gelles of the University of Rhode Island have found that half of all spousal violence is reciprocal while the rest is evenly split between female-only and male-only violence (though men are more likely to inflict serious damage). Those findings are confirmed by a host of other studies. Nonetheless, materials distributed by advocacy groups and used in training for judges, prosecutors, and police assert that 95 percent of domestic violence is male-on-female and dismiss mutual brawling as a "myth."

Perhaps the worst excesses of the War on Domestic Violence are found in the use and abuse of civil orders of protection, also known as restraining orders—which require lower levels of evidence and can be issued without the accused having a chance to defend himself.

Because of this ideology, the War on Domestic Violence gets a bit schizophrenic when it comes to female aggression. Ironically, mandatory arrest laws have led to a rise in the number of women arrested for domestic assault, as sole perpetrators or together with their partners; in some states, women now account for about a quarter of all arrests. Ac-

cording to criminologist Lawrence Sherman, this "resulted in intensive lobbying [by battered women's advocates] not to arrest women regardless of probable cause to do so." In response, many jurisdictions have devised ways around formal gender neutrality.

In Michigan, for instance, when Susan Finkelstein told the arresting officer that she was at least as much the aggressor in their altercation as Jim, she was informed that the policy required arresting the larger of the two parties. More commonly, mandatory arrest laws are amended with a "primary aggressor" clause, which can be interpreted quite creatively: Sherman recalls an incident he saw in one of his field studies in which the man was arrested because he had yelled at his wife—even though she was the only one to actually strike a blow.

While battered women's advocates have had a major impact on the ways in which charges of spousal assault are handled by criminal courts, the reach of the War on Domestic Violence is still somewhat limited by constitutional protections for defendants. Perhaps the worst excesses of this crusade are found in the use and abuse of civil orders of protection, also known as restraining orders—which require lower levels of evidence and can be issued without the accused having a chance to defend himself.

Court orders prohibiting one party not only from harassing but, in some cases, from approaching or contacting another are not limited to domestic violence cases. Normally, getting such an order is a cumbersome process. But under abuse prevention laws, on the books in 48 states by 1988, restraining orders are easily available against current or former spouses or cohabitants and some other family members. (Whether the relationship is close enough to qualify—how about an ex-sister-in-law?—can become the key issue at a hearing.) In the last decade, many states have strengthened this legislation, further streamlining the process of obtaining an order, extending eligibility to people who had dated but not lived together, and toughening penalties for violators.

The basis for a restraining order need not include violence. In Massachusetts, over half of the 60,000 restraining orders in domestic cases issued every year do not, according to a 1995 state report, involve so much as an *allegation* of physical abuse. Elaine Epstein, past president of the Massachusetts Bar Association, recalls "affidavits which just said someone was in fear, or there had been an argument or yelling—not even a threat." In 1990, the state's highest court ruled that a restraining order had to be based on "reasonable fear" of "imminent serious physical harm"; but many judges don't like taking chances and are satisfied with a positive answer to the question, "Are you afraid of bodily harm by the defendant?" In New Jersey, abusive acts which qualify for a restraining order include verbal harassment (which need not involve threats).

Moreover, temporary restraining orders are granted *ex parte*, without the defendant being present or notified—much less informed of the specific charges. Supporters of current laws concede that getting an order takes very little evidence. "I think judges grant the restraining orders without asking too many questions," Massachusetts state legislator Barbara Gray, a sponsor of the original abuse prevention statute, told me in 1995. (Gray has since retired.)

Usually within 10 days, a hearing must be held to determine if the order will be extended for a year or more. That's when the defendant can tell his side—in theory. In fact, writes Boston attorney Miriam Altman, "the mere allegation of domestic abuse...may shift the burden of proof to the defendant." Hearsay is allowed; cross-examination may be limited; and, many lawyers say, the judge is unlikely to give serious consideration to exculpatory evidence. "I don't need a full-scale hearing," one judge told attorney (and Massachusetts state legislator) James Fagan when he brought witnesses disputing a woman's claim of harassment by his client. The only issue, the judge declared, was whether he felt the woman was fearful—"it isn't even who's telling the truth," he said.

The consequences of a restraining order for the man on the receiving end (and it usually is a man) can be quite serious. If he shares a home with the plaintiff, he will usually be ordered to vacate the premises. Any contact becomes illegal—in many states, a felony punishable by prison or fines (it doesn't matter if the "victim" agreed to or even *initiated* the contact). This can have particularly wrenching consequences when there are children involved.

Men who have had restraining orders issued against them on the basis of uncorroborated or trivial allegations have been jailed for sending their kids a Christmas card; for asking a telephone operator to convey a harmless message; for accidental "contact" at the courthouse; and for returning a child's phone call. The pressure on judges and prosecutors to be tough on violators comes not only from women's groups but from the media. In Massachusetts, the *Boston Globe* has been crusading tirelessly on the issue, while showing no interest in horror stories of restraining-order overkill.

While father-rights activists claim that most restraining orders are based on false claims, defenders of the law say that no more than 5 percent of the charges are false. That still adds up to about 2,000 a year in Massachusetts alone—hardly an insignificant figure when it's a matter of people being evicted from their homes, cut off from their children, sometimes jailed, and branded with the equivalent of a criminal record (their names are entered in the abusers' registry)—all without the safeguards of a criminal trial.

The policies in Massachusetts may be unusually tough, but they're hardly unique. Connecticut attorney Arnold Rutkin, editor of the legal journal *Family Advocate*, writes that judges tend to take a "rubberstamping" approach to protection orders, and the "due process hearings" held later are "usually a sham." A New Jersey woman whose estranged husband threatened to take "drastic measures" if she didn't pay the household bills—by which he meant having her telephone disconnected—was granted a permanent restraining order due to "harassment." When state appellate courts moved to curb these excesses, resulting in fewer restraining orders, an outcry from advocates was quick to follow.

When the advocates and their friends in the legislatures do acknowledge the potential for the misuse of restraining orders, it is usually to say that no safeguards can be adopted without endangering victims. As Barbara Gray told me, "You [would be] saying to a judge: On an emergency basis, you have to look at this woman and see whether you think she's telling the truth." Given the horrifying statistics on violence against women, says Gray, one can't take the risk of not taking all accusations seriously.

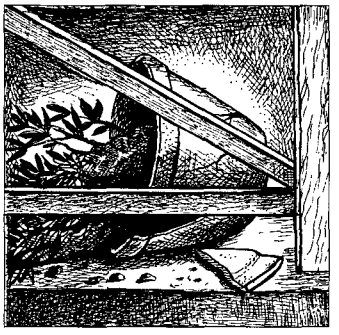
Some judges seem to share that attitude. At a 1995 seminar, dispensing advice to incoming municipal judges, Judge Richard Russell of the Ocean City, New Jersey, municipal court declared, "Your job is not to become concerned about the constitutional rights of the man that you're violating as you grant a restraining order. Throw him out on the street, give him the clothes on his back and tell him, see ya around. ...The woman needs this protection because the statute granted her that protection....They have declared domestic violence to be an evil in our society. So we don't have to worry about the rights."

Judge Russell's comments, captured on tape and printed in the *New Jersey Law Journal*, raised a few eyebrows. However, he suffered no consequences beyond a mild chiding from the Administrative Office of the Courts. By contrast, recently in Maine, Judge Alexander MacNichol was denied reappointment by Gov. Angus King after battered women's advocates complained about his alleged insensitivity to women applying for restraining orders—which, the judge's many defenders said, meant simply that he listened to both sides of the story.

Beyond questions of civil liberties and due process, there is no proof that the crackdown prevents domestic homicides, the ostensible goal of hardline restraining order procedures. Nor is there evidence that it prevents serious assaults. A man who intends to kill a woman and either plans to take his own life or knows that he will face murder charges won't be deterred by the penalties for violating a restraining order, as too many headlines show. A 1984 study by Janice Grau, Jeffrey Fagan, and Sandra Wexler has concluded that the orders have a protective effect for women who were not severely victimized in the first place. If so, peddling them to women in real danger is like giving cancer patients aspirin.

"The restraining order law was changed to protect women who were really abused, but it doesn't work," says Sally Gilmore, the New Jersey police officer. "All it does is create an incredible amount of paperwork for the cops, and most of the time it's just revenge, or just to get him out of the house."

Indeed, it has become a commonplace among lawyers of both sexes that restraining orders are routinely misused as a weapon in divorces. It's hard to come up with reliable estimates of how frequently that happens. But given the advantages conferred by a restraining order, from possession of the house to virtually automatic custody of the children, the temptation is certainly there.



The system, says sociologist Richard Gelles, fails to differentiate between minor charges of abuse and cases rife with danger signs. Indeed, manipulators may be more likely to get the system to work to their advantage than real victims, too scared or too unsophisticated to navigate its channels.

Robert Byers, a Georgia contractor, found himself embroiled in a particularly twisted saga. In 1993, his wife, Lori Anderson, left the state with their 8-year-old daughter. He soon learned that they were with her relatives in Massachusetts—and that the police there were trying to serve him with a restraining order. He went to Massachusetts for a hearing; his request for a continuance so that he could get a lawyer was denied, and the order was extended for a year, barring him from all contact with his wife or child.

Byers went home and filed for divorce. When the Georgia court had trouble locating Anderson to notify her of the cus-

tody hearing, he returned to Massachusetts and went to serve her with the papers. She called the police and he was arrested for violating the restraining order; unable to make bail, he was locked up for three months. Finally, he pleaded guilty to the violation in exchange for a suspended sentence.

In October 1994, Byers won custody in Georgia and went back to Massachusetts to petition for the return of his daughter. The next day, Anderson filed a complaint, alleging that he had loitered in her driveway and made threatening calls to her sister. This time, Byers was held without bail. In February 1995, he was found not guilty by a five-woman, one-man jury; the judge also threw out his earlier suspended sentence after reviewing the evidence.

Two hours after Byers's release, Anderson got a new restraining order. It's hard to tell how long this farce would have dragged on if a probate judge had not put an end to it by ruling that Massachusetts had to honor the Georgia custody decree. Byers was able to take his child home only after a total of nearly 200 days behind bars.

Stories like that of Byers, perhaps without happy endings, are likely to become increasingly common. Spurred by the O.J. Simpson case, the War on Domestic Violence has intensified in the past three years. The Michigan legislature, in a fit of O.J.-itis, decided to allow restraining orders to take effect as soon as they are issued, before the defendant has been served—which means that he can face criminal charges for something he didn't know was a crime, creating great opportunities for entrapment. Last June, California abolished a provision allowing defendants in misdemeanor domestic assaults to have the incident expunged from police records if they compensate the victim and undergo counseling—an option still available to the accused in other assault cases. In 1996, a new federal law made domestic violence the *only* misdemeanor for which a person loses the right to own a gun (with the spurious explanation that domestic assaults are more likely to be prosecuted as misdemeanors than non-domestic ones of equal gravity).

Undoubtedly, there are cases in which victims of intimate violence are badly let down by the system, sometimes with fatal results. But apathy and excessive zeal can coexist—just as horror stories of children yanked from parental homes on flimsy suspicions of abuse coexist with ones of abused children handed back to their tormentors. Indeed, when apathy and excessive zeal do coexist, the policy implications are often disastrous. Douglas Besharov, a child welfare expert at the American Enterprise Institute, compellingly argues that overzealous probes of frivolous claims of child abuse lead to underenforcement where action is needed most because the system is too bogged down in trivial pursuit to single out the serious cases.

It's probably the same with domestic violence. The system, says sociologist Richard Gelles, fails to differentiate between minor charges of abuse and cases rife with danger signs—such as the events leading to the death of Kristin Lardner, the daughter of *Washington Post* reporter George Lardner. (The former boyfriend who fatally shot her in May 1992 before killing himself had a long history of criminal behavior; yet after assaulting Kristin, he was not jailed, despite violating his probation.) Indeed, manipulators may be more likely to get the system to work to their advantage than real victims, too scared or too unsophisticated to navigate its channels.

Even if the dangerous cases are caught early, some people are going to be badly hurt or even killed by their mates. Such things are not always predictable. And we might ask, without creating a new "abuse excuse," whether being denied access to his children might not push a nonviolent person over the edge. "People with nothing to lose are dangerous people," says James Fagan, the Massachusetts attorney and state legislator.

The most obvious casualties of the War on Domestic Violence have been men, particularly men involved in contentious divorces. But it has also hurt many of the women who are its intended beneficiaries. Part of the problem is the one-size-fits-all approach to domestic violence. For many couples in violent relationships, particularly those involved in mutual violence, joint counseling offers the best solution. But if they have come to the attention of the authorities, it's one form of counseling to which they are unlikely to be referred. Couples therapy is vehemently opposed by battered women's advocates—ostensibly out of concern for women's safety, but also because of the implication that both partners must change their behavior.

A few years ago, James Dolan, first justice of Dorchester District Court in Massachusetts, warned that the system may be engaging in "benign abuse" by "denying women the right to continue a relationship without submitting to the authority of the court." Dolan may have been stretching the term *abuse*, but quite a few women might agree with his assessment.

And then there are the women who, often on the basis of a misunderstanding or a single, trivial incident blown out of proportion, are labeled as victims against their will. "It was very paternalistic, even if women were involved in the system," says Susan Finkelstein, reflecting on her experience. "At one point, I told a prosecutor that I didn't appreciate being told what was best for me by someone who didn't even know me. She said, 'It strikes me as odd that you don't appreciate the fact that we're trying to protect you.' What I said didn't matter. It seems so ironic that in trying to give women a voice, they are taking away their voices." ◆

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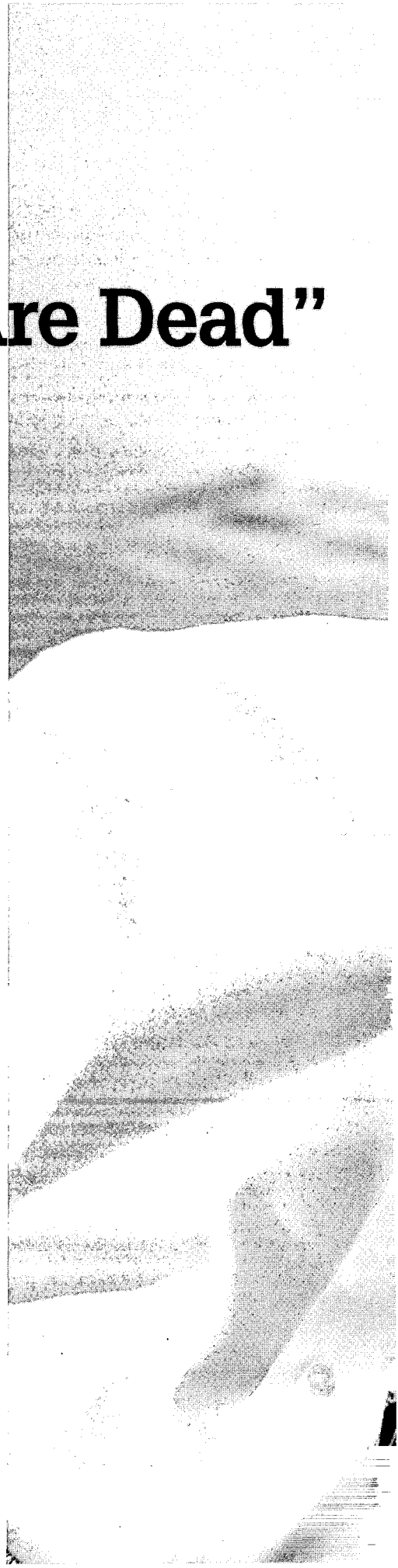
"Racial Preferences Are Dead"

Anti-quota activist Ward Connerly on the end of affirmative action and the battle for a raceless society



"It has been almost a year since you called me and asked me to meet with Jerry and Ellen Cook," University of California Regent Ward Connerly wrote to fellow Regent Clair W. Burgener in 1995. "As you know, I consented to meet with them....I must tell you that there are many moments when I regret having done so."

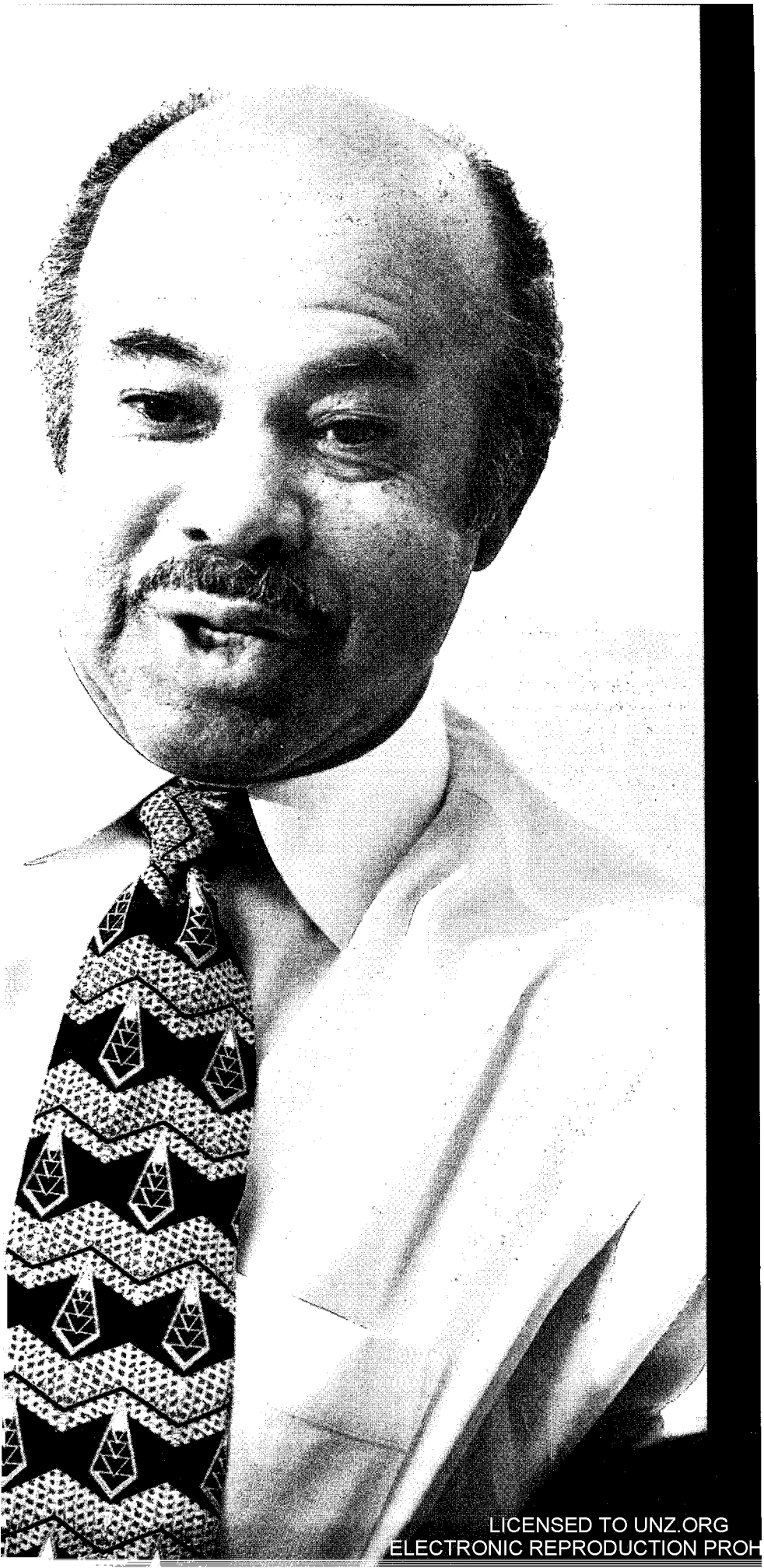
Jerry and Ellen Cook were two citizens on a mission. Their son James, who graduated Phi Beta Kappa from the University of California at San Diego, had been accepted to Caltech's doctoral program in computer science and MIT and Harvard's combined medical school and Ph.D. program. But he had been rejected from each of the five U.C. medical schools.

Jerry, a graduate in management from MIT who has taught graduate-level statistics, and Ellen, a professor of management at the University of San Diego, told Connerly that they wondered about the chances of being accepted to Harvard and Caltech but not being accepted to a single U.C. program. Analyzing admission data gathered under public-access statutes, the couple had solved the puzzle: The U.C. medical schools were maintaining de facto quotas for minority applicants. Preferred minority students, who made up less than 10 percent of the applicant pool, were routinely awarded more than 20 percent of the admission slots.

The Cooks' mission to end race-based quotas in public higher education soon became Connerly's and thrust him into the national spotlight—first as the dismantler of racial preferences at the University of California, then as the campaign chairman of the California Civil Rights Initiative, and now as chairman of the American Civil Rights Institute and American Civil Rights Coalition, organizations he founded to export California's colorblind constitutional clause to other states.

Connerly was born in Louisiana in 1939 and, after his mother's death when he was 4 years old, was raised by his maternal grandmother in Del Paso Heights, a tough section of Sacramento. He attended a local

Interviewed by Michael W. Lynch



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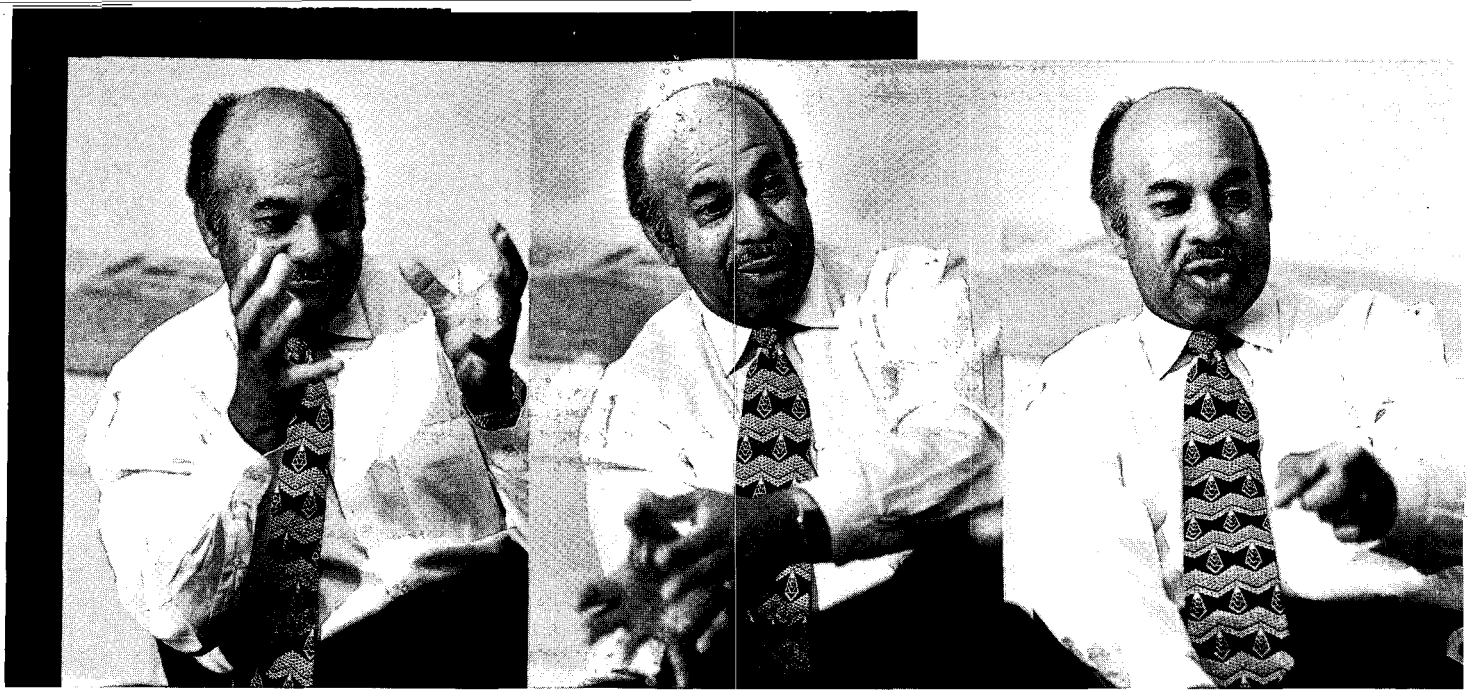
community college before transferring to Sacramento State University, where he studied political theory and was elected student body president. After graduating in 1962, Connerly went to work for the California Department of Housing and Community Development. A few years later, at the suggestion of a young state representative named Pete Wilson, Connerly moved to the Assembly Housing Committee. From 1971 to 1973, he returned to the Department of Housing, serving as its deputy director, before starting his own consulting firm with his wife Ilene.

Identifiably black, Connerly is quick to remind reporters that he is also French, Irish, and Choctaw Indian—a diverse heritage that informs his crusade to make the United States a truly post-racial society. "I really am a product of America," he says. "I'm what came out of that melting pot."

Washington Editor Michael Lynch talked with Connerly in REASON's D.C. office last fall.

Reason: Your interest in dismantling racial preferences began with your appointment as a regent of the University of California. What drew you to the issue and what keeps you involved?

Ward Connerly: When the affirmative action issue unfolded, it was one of those times in life when one has to ask oneself what do you really believe in, what are your own values, how willing are you to submit them to the test of public opinion? I was sitting in a meeting back in 1993, almost my first meeting as a regent, and I heard Provost Walter Massey, the second-highest ranking person at U.C., give a presentation about diversity. I regarded it as almost mindless blather because the platitudes were rolling off his lips, and I asked, "Well, how do you build this diversity? What factors do you take into account?" There was a pause and it was clear that he really hadn't thought about it too much. It was



clear to me that if you're going to build diversity, you have to make choices about people on the basis of those factors that you want to be diverse about.

So I began to ask for data. I began to understand what was going on and to realize that the administration was lying to [the regents]. At that point, the issue wasn't whether I agreed with preferences—which is clearly what was going on. It was a question of governance. I thought, "If I'm going to be sentenced to this Board of Regents for 12 more years, I have to be able to trust what is being told to me by the administration." I came away believing that, on this one issue at least, I could not rely on what they told me and that I would have to do my own due diligence.

I wanted a report on what our practices and our policies were. I received that report in November [1994], and I became more convinced than ever that most of us on the board knew that what was going on was wrong. But it was a case of political correctness. So I challenged them. On July 20, 1995, the regents passed my resolution on a 14-to-10 vote to end preferences in admissions—there was one abstention. The vote was 15 to 10 on ending preferences in contracting and employment at the university.

I fully intended at that point to ride off into the sunset. I thought, I've done my duty. The campaign had been brutal, very personal, and my family had suffered a lot of abuse, as had I. My business had been harmed by my not being there.

Reason: So why didn't you ride off into the sunset?

Connerly: I had been romanced, if you will, by [the organizers of Proposition 209, the California Civil Rights Initiative that outlawed using race- or gender-based preferences in the public sector] for the better part of a year to join their effort. But I didn't want any part of it, for two reasons. One, I didn't want to continue on a statewide scale what I had gone through as a regent. As a regent, I had a legitimate reason for being involved. In a statewide campaign, the preference cartel would give me no slack. The other reason that I really dreaded getting involved is that I knew I would have to contend with the characterizations of "sellout" and "Uncle Tom" and "traitor" like no one has ever had to contend with it, except maybe for Clarence Thomas.

I had said, "No, no, no, a thousand times no." The thing that provoked me into saying yes was that the imminent doom of the California Civil Rights Initiative was reported in the papers. One of my colleagues on the Board of Regents, who voted against removing quotas from admission, Roy Brophy, wrote an op-ed piece that said, "If CCRI does not qualify for the ballot, I'm going to offer a motion to rescind [the ban on race-based preferences] because that will clearly confirm that the regents were out of step with the voters." And I thought, "The hell you say."

That was the thing that prompted me really to get involved. I felt that after all I'd gone through to get this changed at one of America's most prestigious institutions, it could all be lost—and not because the voters didn't embrace the principle that I pursued, but simply because of an inept campaign to gather the signatures.

Reason: The media like to portray Prop. 209 as a Republican Party ploy to elect its candidates in California. I saw a campaign energized by ordinary citizens. What was the role of the grassroots in Prop. 209?

Connerly: If anything, the grassroots used the Republican Party, rather than the other way around. This was truly an ecumenical campaign of libertarians, Democrats, and independents. Independent State Sen. Quentin Kopp played a phenomenal role in this campaign. So did Republicans, firefighters, policemen, housewives, and black people who really didn't like the voice of Jesse Jackson, that Energizer Bunny of doom and gloom. But we realized we needed money, and the Republican Party was able to give us that.

Reason: Is it significant that this now-national debate was sparked in California, the most ethnically diverse state in the country?

Connerly: There is a correlation between the degree of natural ethnic diversity and tolerance of policies which classify us by ethnic background and "race," and then confer benefits on that basis. When you have the kind of [ethnic and racial] differences that we have in California and a government policy which classifies us into basically five groups and says, "Three of you are going to get preferences at the [state] university and two of you

"We didn't adopt 'affirmative action' as a word of art, we didn't run it through the gauntlet of Congress and other public-policy forums. For some of us—certainly for me—the idea that affirmative action has evolved into a system of different standards for people is something I never, ever thought was what affirmative action meant."

are not," that is bound to create tension. It's bound to create its own energy to get rid of the damn policies.

Reason: Did affirmative action have to turn into a quota system in which different applicants are held to different standards?

Connerly: I'm not sure that we really knew what we wanted when we embarked on this detour. We had a feeling that if we stayed on course, it wasn't going to get us to where we wanted to go. We saw some bumps in the road and so we thought, "Let's avoid those bumps and let's see if we can get to grandma's house a little faster by taking this detour."

At first, I really thought that affirmative action was just a stronger version of equal opportunity. You used to see at the bottom of job announcements, "We are an equal opportunity employer." Then it became, "We are an equal opportunity/affirmative action employer." I thought that was just a stronger dose of equal opportunity. But we didn't adopt "affirmative action" as a word of art, we didn't run it through the gauntlet of Congress and other public-policy forums. We didn't do that and, as a result, it meant different things to different people.

For some of us—certainly for me—the idea that affirmative action has evolved into a system of different standards for people is something I never, ever thought was what affirmative action meant.

Reason: Until you were confronted by the data?

Connerly: That's right.

Reason: How large were the preferences at the University of California?

Connerly: They were huge. At the San Diego campus, for example, if you are American Indian, African American, Chicano [of Mexican heritage], or Latino [other Latin American heritage], you get an automatic 300 bonus points. There is no means test, there is no citizenship test, there is no residency test; it is a race preference that is given solely based on checking the box. The significance of a 300-point preference is huge. In many cases, *five* points can be decisive.

At Berkeley, a middle-to-upper-income black student with a 3.0 grade point average who was not a California resident had a better chance of being admitted than a 4.0, low-income, California resident who was Asian or white.

Reason: Do you think the president is sincere about his "conversation on race"?

Connerly: Clinton is a white liberal from the South who still has these guilt complexes, who understands the issue like few in America do. But while he has a good flight, he makes a lousy landing because he doesn't really know where he wants to go or he doesn't have the courage to find out. He wants to be known as the man who *started* the debate. But he's not providing the structure for the debate, he's not outlining the choice that we have to make: the "race matters" philosophy, or the "race has no place in American life or law" philosophy, enunciated by John F. Kennedy. The president is not going to do that, and his race panel is not going to do that.

Reason: What should Clinton do to provide the structure?

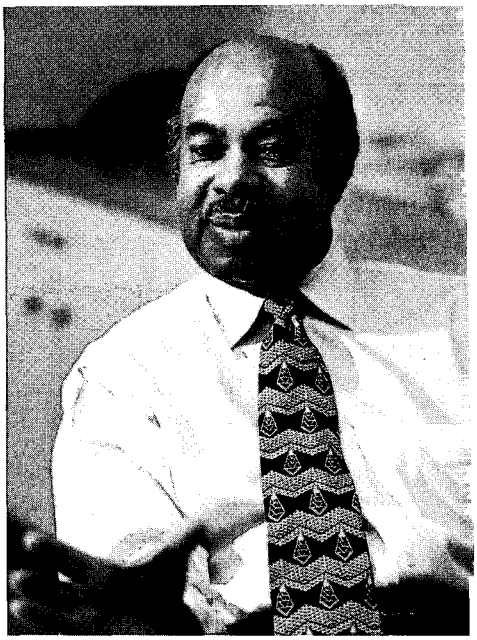
Connerly: If he fully utilized the power of the bully pulpit to draw our attention to race, rather than using this race panel to try and find a new rationale for affirmative action, he could say, "Look, America, I want you to gather in meeting rooms here to talk about black/white. I want to sit you on each side of the table. I want you, the white guy, to tell the black guy what you told me a few minutes ago, that you're tired of black people whining and wanting special treatment. Now, you, the black guy, I want you to tell the white guy what you told me, which is that you're tired of the white guy thinking he's always better than you and thinking that he's superior. Now get it out there on the table and let's have it out."

That's where we have to go. Government can't change these attitudes. But it can structure the debate—it can structure the forum so that we can be honest. That's what's missing from this whole equation.

Reason: Have people's attitudes about race fundamentally changed?

Connerly: I think that Joe Sixpack's and Jane Chablis's attitudes have fundamentally changed. There are four people in our society who you can argue are the most popular figures in America. They all happen to be black: Colin Powell, Oprah

"Long term, the heavy lifting involves our having the courage to go into black neighborhoods, into Latino neighborhoods, and into Asian neighborhoods, and to make the case that their rights are no more secure than anyone else's when our government has the power to make you check a box—and to confer benefits on the basis of the box."



Winfrey, Bill Cosby, and Michael Jordan. Whites outnumber blacks by 8 to 1 almost; name me four whites who are equal in respect to those four.

My detractors will say, "Well, you're bringing up entertainment and sports." They hate it when I bring them up. But they're a part of our culture—they're central to our culture. You can go out to a ball game and you're sitting with America—black and white—watching for the most part black people entertain you.

But those four, those four reflect the changing attitudes of white America.

Reason: How do generational politics play out with regard to affirmative action?

Connerly: Young people respond very well [to proposals like Prop. 209], as long as I can keep them away from their parents. That is especially true when it comes to blacks. If there is any one group that I think is poisoning the well of integration, it's people in the black middle class. I don't mean *everybody* in that black middle class. But for the most part, lawyers, those who are in the academy, those who are in the media—they perceive themselves to have benefited from affirmative action and they want to pass the baton along to their kids.

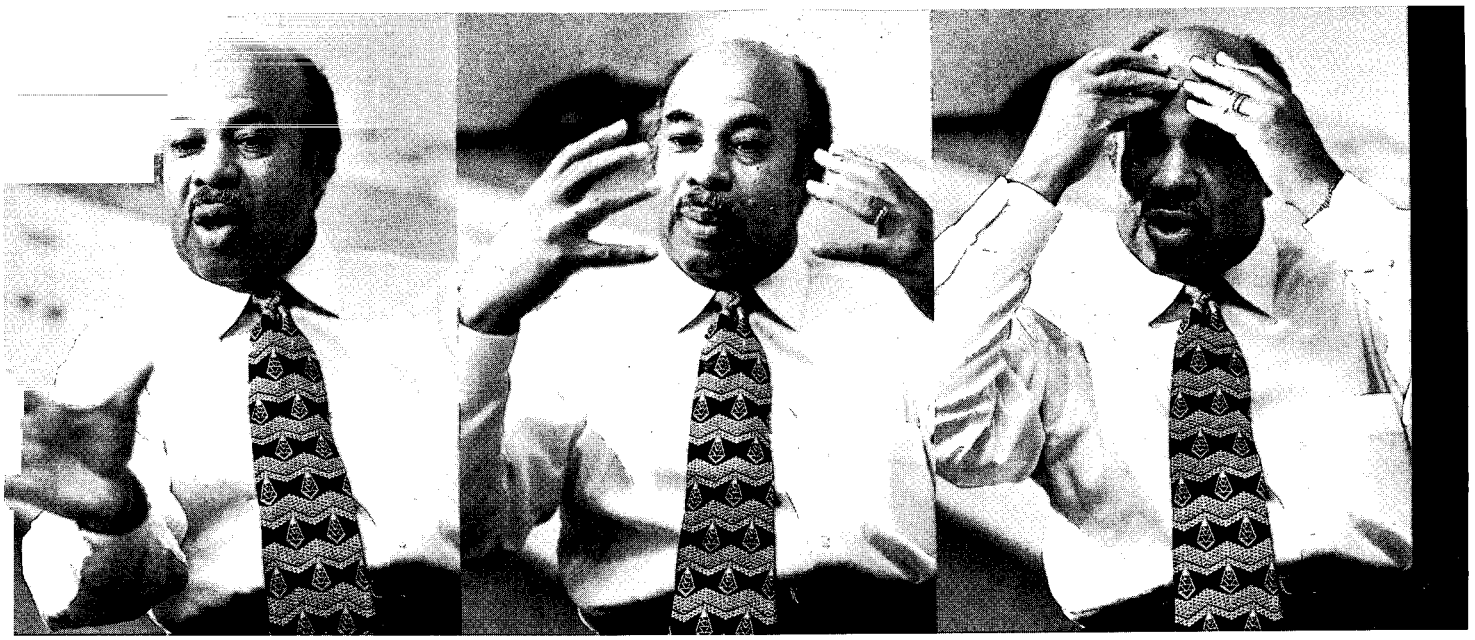
Recently I spoke to the contributions council of the *Fortune* 75. These are companies that in the aggregate contribute about 23 percent of all corporate dollars given to charity. I was told that most of the people there earned $250,000 a year and up. A black woman stood up and said, "My husband and I give our son the best of everything. He lives in a suburban neighborhood, goes to a private school, plays tennis, lives an integrated life. But pretty soon he's going to have to go to college and we're going to have to sit him down and tell him about the professor who's going to try to steer him into the wrong track because he's African American. We're going to have to awaken him to the cruel world of racism." I thought, "He's gotten this far on his own without it. Why then is he *now* going to have to be educated by you about racism as he goes to some college?"

Reason: What role do universities play in fostering the culture of preferences?

Connerly: Universities are the most race-conscience institutions in America. Race seeps out of every pore. They think it's their duty to build this welcoming environment and, for all the right reasons, they do all the wrong things. They take these suburban kids who have lived integrated lives—middle-class black kids—and they bring them to "Black Welcome Week" at Berkeley. They give their names to the black student associations, which recruit them and tell them to come and have pizza with "your brothers and sisters." They're pressured to join their brothers and sisters. If [new students] don't, they're viewed as Toms, they're viewed as wanting to be white. So they start down this path of ethnic studies, they live in this multicultural-center ghetto where their only friends are blacks and occasionally a Latino. Once in a while, they will get their own floor in the dorm, they get their own curricula, and when they graduate, they get their own separate graduation ceremonies based on their ethnic background. Then they join the Black Alumni Counsel and the Black Lawyers Association or, if they go into business, it's the Hispanic Chamber of Commerce or the Black Chamber of Commerce. We prepare them well for a life of separatism.

Reason: Let me ask you about the other side of this generational effect: What do you say to a 70-year-old woman who attended a segregated school, suffered daily the injustice of Jim Crow, and whose situation changed greatly when the federal government stepped in?

Connerly: It's not the 70-year-old that you have to worry about, it's the 50-year-old and the 40-year-old. Those are the ones that are causing the most grief right now in terms of public policy and public attitudes. Because, ironically, the 70-year-old knows that things have changed. The 70-year-old is the first person that accepts the fact that, boy, there's been a lot of progress. But if that 70-year-old happens to be what I call one of the 10 percenters—and I'll explain that to you—you tell that person about the changes in America. How it used to be that you couldn't drink from the fountain, you couldn't go into the restaurant, your kids couldn't attend the school. You tell them about life now and how they can do all those things. I think that they will accept that.



It also depends on what part of the nation you're in. If you're in Milwaukee, where blacks are 12 percent of the population and the dominant minority, and there are many institutions where no blacks are working, they know that they don't get a fair shot. They know that people around there are not going to give them equal opportunity—and I don't mean preferences here.

It is hard to tell that person that you don't need affirmative action. I think you can tell the person that we don't need *preferences*, that we don't need quotas, and that we don't want to start down the road California went down.

But I think, then, the debate switches from that 70-year-old black person to the white person in Wisconsin. You have to say, "Look, we have to figure out a way here to change the culture of these institutions. We have to figure out a way of being more aggressive about dealing with discrimination."

I want to create a paradigm that allows us to detect discrimination and to deal with it—not to give preferences, but to make sure that people get an equal chance to compete.

Reason: How do you craft affirmative action that doesn't quickly turn into quotas?

Connerly: First of all, under no circumstances do we go with numbers, goals, and timetables because they lead inevitably to quotas. No matter how much you say, "Quotas are illegal," they are practiced. Racial counting cannot be a part of this new paradigm. But I don't think that we're ready yet to go cold turkey to a color-blind society. I think that black people who have become so emotionally dependent on this system cannot have the elimination of preferences just shoved down their throats. I think that we have to provide some sort of reassurance plan.

I think that black people fall into four groups on this issue. There are what I call the "10 percenters." They believe that preferences are justified because of slavery, Jim Crow, and all of that.

There's another 30 percent who believe that preferences are wrong and affirmative action has become a system of preferences. These are people who have their own businesses, who are in government, who are Republicans, who are conservatives, who are moderates—people who believe that there is a taint to affirmative action. They want to get rid of that taint, that stigma. That's the group that voted for Prop. 209.

Then there's another 30 percent who will tell you that preferences are wrong but who say, "You've got to reassure me that the white man is going to be fair, that he's not going to go back to the old boys' network. If you can reassure me of that, I'll join you. I'll vote for this, if you can just give me that reassurance."

There's a final 30 percent who say, "I know that preferences are wrong, but not only do I want the reassurance, I want some more time here, until my kids and my grandkids have all gotten through the pipeline."

I've written off the 10 percenters; you'll never change them. To those who want more time: I can't give you more time—preferences are wrong. They are harming innocent people, so I can't give you more time. Those of you who want the reassurance, I think I owe you that.

As we begin to craft this new paradigm, we have to think about those things that will allow us to provide that reassurance. I don't have the answers to that. I'm trying to develop this as I go around the nation and trying to figure out what it's going to take to close the deal. It's that 30 percent that want the reassurance—and I meet them all the time. I have to be able to convince them that even if people aren't basically good, here are some tools that are in place that are going to allow you to be certain that you're going to get fair treatment. I don't know how we can craft a color-blind society overnight.

Reason: How do you make it clear to minority youths that they are not being disenfranchised by policy changes? How do you shake perceptions that there are no opportunities for minority youths?

Connerly: Kids presumably go to school—we mandate they go to school, don't we? If kids go to school, there should be teachers and counselors there. We have to ask them, "Are you putting that sort of idea into kids' heads?"

When we talk about the deficiencies of K–12 education, that is precisely the kind of flaw that we find. Teachers and counselors are not providing role models for these kids and are not providing the kind of information that they should be. More than ever, teachers and counselors need to be well-rounded to provide the

kind of support that these kids are not getting at home.

There are other institutions—like United Way, the Salvation Army, and [professional basketball player] Kevin Johnson's St. Hope Academy in Sacramento, which takes kids after school and provides them with a home away from home—that can provide the information. Do they go to church? If they do, then the church can sort of provide that. If they don't go to church, they probably watch television. If they watch television, maybe our government ought to induce some of these stations to provide public-service announcements that hit these kids: Have Michael Jordan or somebody making a statement that, "Hey, I understand that Chevron has some jobs for young kids who want to work this summer. Come on down." There are all kinds of things we can do.

That's part of the reassurance package I see us having to do to let people know that we are serious. As a conservative, I plead guilty for my colleagues who are not doing enough to provide that reassurance package. We lack the credibility because it seems we're only preoccupied with eliminating the preference system. We have not done our job to say, "We're doing this because we want you to live a better life, because we think you can do it on your own without having to suffer this taint, this stigma."

Reason: Much attention has been paid to your rise from humble beginnings to a successful businessman—usually in an attempt to somehow show that it was not the result of hard work.

Connerly: The defenders of preferences don't want any good news. They don't want to believe that the American dream is realizable for black people. It contradicts their whole value system. Their arguments rest on the notions that Americans are bad, that white people cannot be trusted, that you have to have this gun to their head to make them do the right thing, and that black people need this system to navigate the daily transactions of American life. That we can't make it without it—not because we're not talented, but because we won't get a fair deal.

It is really hard to defend affirmative-action preferences. The only arguments you can use are either that we need diversity just for the sake of diversity, or that America is still racist. You have to embrace one of those two. And you find that you can't win those arguments at the end of the day. So you don't deal with the issue as an issue.

One of my detractors is a guy named Marion Woods. Marion Woods was former California Gov. Jerry Brown's welfare director. He is married to a cousin of mine. He sat at my Aunt Hazel's house—my Aunt Hazel supports me—and he said, "We're going to bring him down, we're going to bring him down." And the way that you bring him down is you take him as a candidate, you don't deal with the issue as an issue. You deal with it as a candidate's campaign. You try to find things that will somehow discredit the individual.

Reason: An anti-preference initiative recently lost in Houston and federal anti-preference legislation is stalled in Congress. What do these outcomes say about the future of racial preferences?

Connerly: Racial preferences are dead. All that is required now is to give them a decent and honorable burial. The defeat of the Houston initiative and the cowardice in the House Judiciary Committee are speed bumps that slow down the movement to end preferences. But they won't stop it.

The Houston initiative occurred in a political community in which black people represent 26 percent of the population, Latinos 33 percent, and Asians 6 percent. In this environment, you can construct a political calculus of women and minorities allied against white males. That is precisely the political equation that the mayor [of Houston] crafted. You should not be surprised when you can get people to vote on the basis of their racial identity and defeat measures like the Houston Civil Rights Initiative.

It would have passed if the original language of the initiative had been what the voters were voting on. The language that appeared on the ballot—along the lines of "Shall the City of Houston prohibit affirmative action for women and minorities now and in the future?"—was not the language that people had signed the petitions for. [That language] was about preferential treatment. When the mayor was able to make sure the voters were voting on "affirmative action," and not on patently preferential treatment, the election was lost.

Long term, the heavy lifting involves our having the courage to go into black neighborhoods, into Latino neighborhoods, and into Asian neighborhoods, and to make the case that their rights are no more secure than anyone else's when our government has the power to make you check a box—and to confer benefits on the basis of the box.

Reason: What is the payoff for all of your efforts? What is your vision of the post-preference future?

Connerly: My vision of the post-preference future is probably best summed up by Janice Camarena Ingraham. Janice is a white mother of four, three when I first met her. When her first husband, who was Mexican American, died, she had to go back to school to support her family. She enrolled in a remedial English class, which was part of a program restricted for African Americans at San Bernardino Valley Community College.

On the first day of school, the instructor said there were two people in the class who would have to leave. Both were white women, and one of them was Janice. Janice sued and the case was settled out of court. As a result of this experience, she became convinced that this was a fight that was worth fighting until the end. There was another program, the Puente program, for Latinos and Chicanos. Janice realized that one of her daughters could attend the Puente program, but the other two could not, since their father was white. Janice came away believing that something was wrong in this country when one of her daughters could attend a class but the other two could not.

When Janice had her fourth baby in early November 1997, she refused to check the box on the birth certificate indicating racial and ethnic identity because she wanted a raceless baby.

For me, this whole movement leads to the goal of not checking the silly boxes, of not even *wanting* the boxes. That is where we are heading. We are going back to what John F. Kennedy said in 1963, that "race has no place in American life or law." The influence of our movement, the one thing that I can pass into my grave feeling very good about, is that we started the momentum so that now Americans are genuinely believing and rededicating themselves to the proposition that we really do want to be a raceless society. ◆

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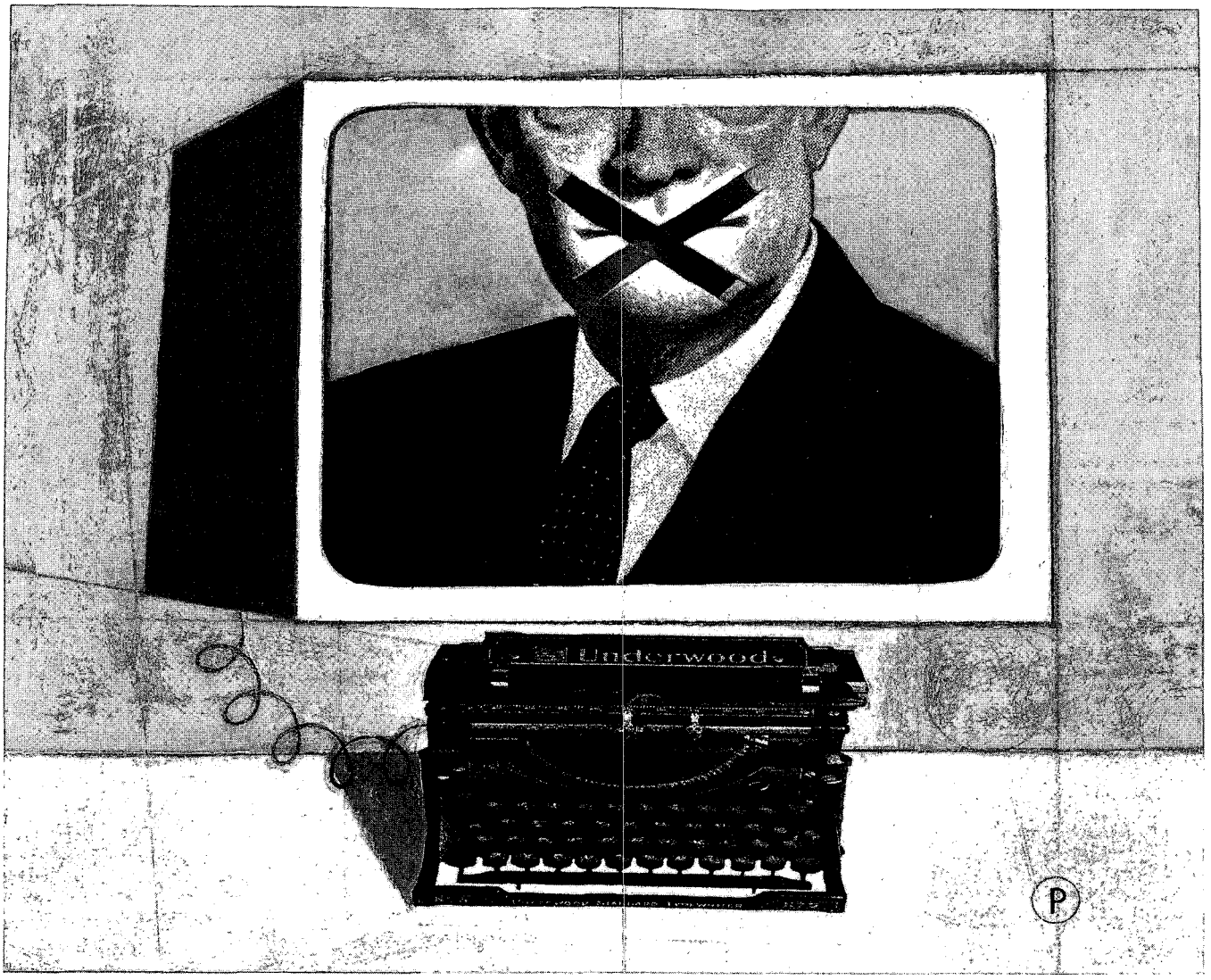

PETER BENNETT

The Drudge Retort

The $30 million libel suit against online gossip Matt Drudge has little to do with justice—or the Internet.

"Internet On Trial" was how *Vanity Fair*'s December issue billed its report on the libel lawsuit against Matt Drudge, the Internet's first political gossip columnist. What's really on trial is not the Internet itself but two other things: the degree to which mainstream journalists demonize the Net and the usefulness of libel law itself.

Drudge, 30, is a news junkie who decided to become a gossip columnist and, thanks to the Internet, succeeded beyond his expectations, if not his wildest dreams. Starting from scratch in 1995, Drudge has built up a

By Mike Godwin

subscriber list of (he estimates) 85,000 and won a substantial contract with America Online to publish his online newsletter there as well. And in the past year or so, he has blazed a meteoric path—becoming a frequently read source for political journalists, if not always a well-respected one.

But whatever Drudge's dreams of success at Internet journalism, he almost certainly didn't anticipate the nightmare of a $30 million lawsuit. And that's precisely the amount of reputational damage White House aide and former journalist Sidney Blumenthal is claiming that Drudge and America Online did to him when the online columnist published an item suggesting that Blumenthal has a history of spousal abuse.

As it turns out, Drudge's report, which was based on information from an undisclosed source, adds up to a falsehood—there is no known evidence that Blumenthal ever engaged in anything like domestic violence with regard to Jacqueline Jordan Blumenthal, his wife of 21 years, who heads the White House Fellowships Commission. Tellingly, Blumenthal read the Drudge item on the evening of August 10, 1997, the same day it was released—illustrating the immediacy of Internet news, Drudge's must-read status, or both. (Jacqueline Blumenthal received a faxed copy of the item from a former congressional press secretary the following morning.)

Understandably incensed, Blumenthal had his lawyer, William McDaniel, send what *Vanity Fair* called a "strongly worded" letter to Drudge, who, after quickly discovering that he could not verify his original item, published an apology and a retraction. Unsatisfied with this response, Blumenthal filed a libel lawsuit against Drudge and America Online, seeking an improbable $30 million in damages.

The case raises a raft of First Amendment issues—most of which have been only casually addressed, if at all, by the legal commentators and media watchers, and all of which undercut Blumenthal's case:

■ *Who's a public figure?* Longstanding libel-law principles hold that a "public figure"—someone who, as the Supreme Court put it in *Gertz v. Robert Welch Inc.* (1974) thrusts himself "into the vortex" of public debate—bears a heavier burden of proof than a private individual plaintiff. While the latter may need only to prove negligence (under some states' libel laws) in order to recover damages, a public figure must prove that the publisher of the defamation either knew the statement was false or that he didn't care whether it was true or not. This poses a tough problem for Blumenthal, whose work as a pro-Clinton journalist almost certainly would qualify him as a public figure even if he had not followed up that work with a new job on the White House staff. While Drudge was (in my view) almost certainly negligent in what he published, there's no evidence yet that shows he knew it was false or that he didn't care about its truth—quite the contrary, in fact.

■ *Vicarious liability.* Drudge is not the only defendant, of course. Surely America Online's assets are the main reason for the inflated monetary demands. But where $30 million might have seemed a fair figure if Blumenthal had been publicly humiliated and fired from his White House job, press reports indicate that, if anything, President Clinton has been quite supportive of Blumenthal in the aftermath of Drudge's erroneous report; he even allowed Blumenthal to state publicly that he had the president's support in suing the online journalist. Still, this logic might escape a trial court appalled by the gravity of Drudge's spousal-abuse charge, and if it were to award damages of $30 million, America Online is the only party to the case that might conceivably be able to pay it.

But once again Blumenthal has a problem—namely, that America Online, which provided access to *The Drudge Report* but did not prescreen it, cannot reasonably be said to have had the kind of relationship to Drudge that, say, *The New York Times* has to its reporters. A traditional news organization like the *Times* can be held legally and financially responsible for any libels its reporters generate because the *Times* has editorial policies and an editorial hierarchy ensuring that nothing will appear in the newspaper that its editors have not approved before publication. And ever since the milestone 1964 case *New York Times v. Sullivan*, the Supreme Court has grounded libel liability on the concept of "scienter": A successful plaintiff must be able to show that the publisher either knew or should have known about the offending content prior to publication.

McDaniel, Blumenthal's attorney, has hinted he may sidestep this evidentiary hurdle by showing that America Online was reckless even to contract with Drudge—that Drudge's reputation for publishing unsubstantiated rumors should have kept the service provider from signing a contract with him, just as a builder should know better than to hire a subcontractor with a reputation for drunkenness or negligence. But this is, after all, Drudge's first libel lawsuit; it can hardly be said that AOL should have known Drudge was going to publish actionable material when there were no previous cases to show AOL he had done so in the past. Given that the legal theory behind suing AOL is shaky at best, AOL's presence in the lawsuit is hard to justify, legally speaking. Even if Blumenthal loses, the prospect of such lawsuits may scare AOL and other providers away from carrying controversial political content.

■ *Reputational damage.* Let's suppose I'm wrong about Blumenthal's status as a public figure and about his ability to keep America Online in the lawsuit. There remains the issue of whether Blumenthal has actually suffered any damage to his reputation *at all*—much less $30 million worth. I won't dispute that Blumenthal found Drudge's false story personally painful—he and his wife surely did. But the raison d'être of libel law is damage to *reputation*, not to one's psychological well-being. That's why "publication"—legalese for the showing of the defamatory statement to a third party—is the *sine qua non* of libel cases: You can't have committed a libel merely by hurting someone's feelings privately.

We can start by reminding ourselves that Drudge quickly retracted his false report and apologized for it—more than once, as it happens. This means that, at the very least, the same readership who saw the original erroneous report saw its retraction, which ought to be enough to reduce the reputational damage—whatever it might have been—significantly. But that can't be the end of the inquiry, since Drudge's retraction, and Blumenthal's announcement of the lawsuit, were immediately reported and discussed all over the Internet with an audience far broader

than Drudge's core subscribers. What's more, it was a headline-grabber in lots of traditional media outlets as well, including *The Wall Street Journal* and *The New York Times.*

This raises a central question for the case—one that not only calls the whole foundation of the lawsuit into question but also underscores the extent to which both traditional media and traditional legal commentators have been willing to shut off their critical faculties when it comes to thinking about the Internet: *Is there anyone at all who knows a) who Blumenthal is and b) what Drudge originally wrote about him but who does not also know c) that Drudge retracted his story?* I'm willing to bet that the answer to this question is a solid *no.*

The answer might be different if Blumenthal were a public figure as widely known as, say, Bill Clinton—or even Conan O'Brien. But Blumenthal is well-known only in those circles that pay attention to bylines in *The New Republic* or *The New Yorker*—Blumenthal's former employers—and you can bet that to anyone with whom Blumenthal even *has* a reputation, Drudge's flat retraction is already old news. In other words, this is one case in which the media—both old and new—have functioned just the way they're supposed to in an open society. Drudge's correction has caught up with, and even outpaced, the original defamation.

Matt Drudge: No reasonable person has ever supposed that he couldn't be sued for saying something libelous on the Internet. A good indication of the kind of nonsense one hears from commentators dealing with the Net is the statement that we "don't know what the rules of the road are."

This fact is obvious to anyone who reflects on the Drudge case, but it is a fact that has nevertheless been omitted from virtually all of the reports about the case, which, when not skewed by partisan comments (liberals tend to be anti-Drudge, and conservatives tend to defend him reflexively) are full of comments about the Internet as a no-man's-land of dangerous speech that is only just now being civilized by the legal system. In reality, the Net has always been subject to libel law (as well as other laws), and no reasonable person has ever supposed that he couldn't be sued for saying something libelous on the Internet. A good indicator of the kind of nonsense one hears from legal commentators dealing with the Net is the statement that we "don't know what the rules of the road are."

The fact is, we do know what the rules are, but what most of the pundits have yet to grasp is how the old rules play out in new ways on the Net. For example, one of the reasons a newspaper can still be made to pay a libel defendant even when it has published a retraction is that the retraction (one may reasonably argue) never has quite the impact that the original defamation did—not even if it's printed on the front page, and not even if the falsity of the report is further publicized by the filing of a libel lawsuit. That's why Richard Jewell, the hero of the Olympic bombing whose reputation was seriously damaged by the FBI's irrational identification of him as a suspect in the crime, and by the press's exacerbation of that damage with its own wildly speculative reports, is still in the process of extracting tidy monetary settlements from news organizations around the country. Publications such as *Time* took months to clear the air—quite a contrast to the immediacy of Drudge's retraction.

This has not prevented would-be legal pundits from dithering about the Net. "If anything, a libel on the Web is more permanent in impact even though it is evanescent in form," University of Virginia law professor Robert O'Neil told *New York Times* reporter Carl Kaplan. O'Neil's comment is an odd one from someone who's also director of The Thomas Jefferson Center for the Protection of Freedom of Expression, but not untypical of remarks by a legal commentator in these days of social panic about the Internet. What the commentators in this case have somehow missed is that ink on dead trees is a little more permanent than your average webzine and that Blumenthal's sufferings, whatever they may have been, don't hold a candle to Jewell's.

And for that Blumenthal has two phenomena to thank: the immediacy of news reporting on the Net, and the willingness of the media to sensationalize any story that makes the Net look scary. Operating in tandem, these factors have made the retraction a bigger story than the libel ever was—which in turn makes Blumenthal's lawsuit look a lot more like opportunistic overreaching and a lot less like justice in action. ◆

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PETER BENNETT

Hats Off To Unofficial Journalism!

The Drudge case shows how anyone can be a journalist.

"The notion of wearing a press card in the band of my fedora, the way I saw it done in the movies or in illustrations in comic books, struck me as a wonderful way to live one's life, and I never wanted to be anything else but a reporter with a press card."

—Charles Kuralt, ©1997 "Interview a Journalist," The Newseum

It was all so easy then.

Walter Lippmann was the reigning columnist, Edward R. Murrow's

By Adam C. Powell III

voice boomed out, "This is London," and on the big screen, Humphrey Bogart played the no-nonsense, hard-drinking, chain-smoking, two-fisted newsman ("journalist" was considered pretentious). No doubt Bogart had a rack full of fedoras.

It was more than enough to inspire Kuralt and a generation of teenagers who dreamed of crusading page-one remakes or romantic foreign assignments in London or Paris, where the job required a trench coat *and* a fedora.

Now, the big newsrooms are smoke-free environments littered with empty Evian bottles where cigarette butts used to be. The newsmen have been replaced by journalists, or at least reporters, most of whom now are not men.

And instead of the gelatin-print black-and-white clarity of Charles Kuralt's youth, we have the muted ambiguities and confusing convergence of the Internet, where no one knows if you are a dog, let alone a journalist.

So who is a journalist, anyway? And does it matter?

Of course, we recall the world of Kuralt's youth through the gauze of nostalgia and late-night movies. There was considerable confusion then. Edward R. Murrow may have won the awards, but the number-one news program on radio was anchored, as we would say today, by a fast-talking vaudeville entertainer greeting "Mr. and Mrs. America and all the ships at sea." Walter Winchell wore a fedora, but there was spirited debate whether he was a newsman, an entertainer, or just a gossip.

In other words, Walter Winchell was the Matt Drudge of his day.

Matt Drudge, for those who do not follow arcane journalism debates or the annals of libel law, lives in Los Angeles and files reports on the Internet. Just like Winchell, Drudge brings us a fast-paced pastiche of inside gossip, rumor, innuendo, and, oh yes, news. Just like Winchell, Drudge has a big following. Just like Winchell, Drudge is sometimes wrong. So is *The New York Times.*

But one mistake landed Drudge in serious trouble, on the wrong end of a libel suit. It is not important to know the details of the error, and of Drudge's subsequent admission of error (at the *Times*, they call it a "correction"). It is important to note that journalists have the protection of the Bill of Rights, and specifically the First Amendment, and the courts have given the media a pretty wide berth to publish or broadcast what editors believe to be the truth, in the public interest.

But Matt Drudge does not have an editor. Matt Drudge does not even claim to be a journalist. In fact, he says he is *not* a journalist. But he does wear a fedora, at least for his publicity photos.

Does freedom of the press belong to someone who says he is not part of the press? Wait, it gets even more confusing. When Lippmann was writing his column, it appeared in respectable newspapers with professional editors and prominent publishers. When Edward R. Murrow and Walter Winchell were on the radio, they appeared on respectable networks with professional editors (for Murrow, at least), backed by prominent broadcast barons.

But Matt Drudge's work is not in a respectable newspaper or on a national broadcast network. It appears on the Internet. Anyone anywhere in the world can read it. You can link to it via America Online, but the important point is you can link to it from anywhere in the world, for free—Drudge on demand, worldwide.

So when Matt Drudge is sued, who is his publisher?

In the age of the Internet, we are all publishers. Everyone can publish stories good and bad, true or false, over the free worldwide distribution medium of the Internet. You don't need to wear a fedora. You don't even need to go to journalism school.

In the age of the Internet, we are all publishers. Everyone can publish stories good and bad, true or false, over the free worldwide distribution medium of the Internet. You don't need to wear a fedora. You don't even need to go to journalism school.

So how do the courts know who enjoys the constitutional protections of press freedom? The easy, cynical answer used to be that freedom of the press belongs to those who own one. But now we all own one, or we can walk down to the public library, or Kinko's, and use one for free or for a nominal charge.

So if freedom of the press is for those who own one, freedom of the press now protects us all. Of course it always did, but some journalists claimed the First Amendment belonged just to them, not the public, so it is useful for the Internet to have rendered moot that narrow interpretation of the Constitution.

All of which leads to what may be an even more interesting issue: How do governments all over the world know who is licensed to practice journalism?

But wait, you may say, in most countries, and certainly in the United States, journalists are not licensed by the government.

Yes, they are.

If you live in New York City and want to cover that traditional first assignment of cub reporters, the police beat, you will be required to obtain a license from the government.

They call it a press credential.

It is a small shield, renewable annually, and if you don't get it, then you don't get it—the story, that is. There may be 8 million stories in the naked city, but without the government journalism license, you will not be permitted anywhere near the big ones.

For the truly well connected, New York issues special license plates with the letters *NYP.* This lets you drive your car right up to the scene of a crime, or an election, or Times Square on New Year's Eve. And the city sets aside special NYP zones where only

cars with those special government press licenses can park. In New York, where a garage space can rent for more than a small house in some other cities, this is not just a convenience. A favorite game around town is spotting a new NYP zone and guessing who lives nearby.

Surely this is innocuous, some say. The government would not favor one newspaper over another, or one radio station over another.

Guess again.

The New York Times and CBS News could get credentials by the drawer-full for their reporters. But for years the "alternative" newspapers in New York City were denied city licenses—er, credentials. And journalists not employed by one of the big news organizations were almost always out of luck.

So one solution was to let the journalists themselves grant the licenses. And just as with the other self-rating, self-regulating, self-censorship media schemes of the 1990s, the government could say it was not an official government act. The journalists made me do it.

Until the 1940s, women and minority reporters were barred from covering Congress *by the press itself.* It took pressure from newly elected minority congressmen to force the white male press to issue press credentials to people who did not look like Humphrey Bogart or even wear fedoras.

The result is predictable to students of economics: Journalists themselves limit other journalists' access to news stories. Sometimes it has not been pretty.

On Capitol Hill, the licenses—er, credentials—are handed out by the journalists in the press galleries. Until the 1940s, women and minority reporters were barred from covering Congress not by government edict but *by the press itself.* It took pressure from newly elected minority congressmen to force the white male press galleries to issue licenses to people who did not look like Humphrey Bogart or even wear fedoras.

In more recent memory, Bloomberg Business News was refused credentials to cover most of Washington. Michael Bloomberg delivered his news on computers, not on newsprint or over the air, so he could not be a journalist, or so the argument went. Bloomberg's competitors were in effect keeping a new competitor out of the market.

As Bloomberg tells the story, he finally gave the material from his news service to *The New York Times* for free, so he could point to his articles in the newspaper. And then everyone said, oh, yes, you must be a journalist, and Bloomberg received his credentials.

Can Matt Drudge get a license to cover the news? Can he get that piece of paper that lets him interview a member of Congress, or a member of the New York City Police Department at a crime scene? Not likely.

So who is a journalist? Whoever the government says is a journalist.

Under certain scenarios, this could also mean the government would decide whether we can ever see the work of those not officially designated as journalists. Here is how it would work:

The Clinton administration has suggested that everyone on the Internet (at least in the United States) should submit to content ratings, all so America's children can be protected from unwanted words and images. To avoid First Amendment problems, journalists would be exempted from the proposed ratings systems. The ratings would be "voluntary," of course, as are the ratings that have been imposed on the television networks—ratings which also exempt journalists.

But who would receive the official "journalist" exemptions from the ratings system? Who is a journalist?

This is not an academic question but a commercial one. Much of the revenue that supports journalism online, as in print and broadcasting, comes from advertisers. The result of losing or not getting the journalism license would be smaller potential audiences, less advertiser interest, lower revenue, and therefore less chance of survival—or existence to begin with. Such a system would in effect be an electronic "prior restraint," a practice that has repeatedly been ruled illegal when the government has tried to use it against newspapers.

On television and online, the mainstream conglomerate news services would of course be classified as news. But on television, *Hard Copy, Inside Edition,* and other syndicated reality-based programs might not be classified as news. Oops: *Inside Edition* just won the prestigious George Polk Award for investigative reporting. Back to the drawing board. But Matt Drudge need not apply.

Consider an explicit abuse of the power to license journalists, this one from South Africa 10 years ago, when journalists who opposed apartheid, often grouped under the label "alternative press," were simply refused licenses to report the news. The system was described at a conference of African editors in November by those who'd had firsthand experience with the editors who issued press licenses in the 1980s.

"The alternative press could not get credentials from these 'self-regulating' bodies," said Kanthan Pillay, now managing editor of the daily *Cape Times* of Cape Town. "The overall effect of these regulations on the press was a disaster." When he was challenged by some journalists at the conference, who said journalists should license themselves, just like doctors, Pillay's response drew applause: "The right to express yourself is not part of being a journalist. It is part of being a human being."

You don't even need to wear a fedora. ◆

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A Sixth Opinion

Unimpeded by science, a presidential panel will declare that Gulf War Syndrome is real.

By Michael Fumento

This whole nasty Gulf War Syndrome thing just won't go away. But President Clinton is about to solve the problem.

The problem is that medical and scientific authorities refuse to ratify popular beliefs about GWS. Five expert panels—Clinton's own Presidential Advisory Committee, a panel set up by the National Institutes of Health, another by the Institute of Medicine, and two by the Department of Defense (one of them chaired by Nobel laureate Joshua Lederberg)—have studied volumes of medical evidence and found no evidence that GWS is real. The solution, so quintessentially Clintonesque, is to replace these authorities with political appointees. In November the president announced that he would appoint yet another GWS panel.

Clinton wants a political rather than a scientific evaluation of GWS because studies published in major medical journals have repeatedly shown that Gulf War vets have no more deaths, cancers, birth defects, miscarriages, or hospitalizations than vets who didn't deploy to the Persian Gulf. This isn't to say that they never have health problems. One researcher who claims GWS is real said he had identified no fewer than 123 symptoms. These range from the utterly mundane, such as hair loss, graying hair, and weight gain, to the utterly preposterous, such as semen that burns flesh like napalm, vomit that glows in the dark, and claims by two vets that they are literally shrinking.

In short, this "syndrome" consists of the same illnesses occurring at the same rate we would expect for any group of 700,000 Americans, their spouses, and their children. Throw in an element of hysteria and it's easy to account for both the outlandish complaints and psychosomatic symptoms such as labored breathing, aching joints, and stomach pains. (See "Gulf Lore Syndrome," March 1997.)

The list of alleged causes for GWS is almost as long as the list of symptoms. Among them: nerve gas, anthrax, pills, vaccinations, depleted uranium in shells and tank armor, burning oil, burning kerosene from lamps, fresh lead paint applied to vehicles, a bacterium that is normally harmless, insecticides, and even Scud missile fuel. New theories keep popping up because the old ones never pan out. No one can find a cause for GWS or a conspiracy to cover it up any more than they can find a cause for George Bush's assassination and its subsequent cover-up, the reason being that Bush is alive and well.

For politicians, this science stuff just won't do, because the news media and activist groups have convinced the American public that GWS is real. Every congressional committee that has considered the issue has stuck its finger in the wind and concluded either that GWS exists or that, at the very least, the Pentagon has failed to investigate it properly.

The latter was the conclusion of the most recent inquisition, that of the House Subcommittee on Government Oversight, which held GWS hearings on eight occasions over the past two years. The committee is headed by Rep. Christopher Shays (R-Conn.), who has gone out of his way to sensationalize the GWS issue. It was Shays's committee that invited Pfc. Brian Martin, who has claimed that he emitted glowing vomit and burning semen, to testify not once but twice. When Martin talked about the vomit, which he said happened every day for 10 months during training after he returned from the war, no one on Shays's committee thought to question it. Shays also invited Navy Seabee Nick Roberts to testify, even though his staff knew Roberts would relate his medically impossible story about contracting cancer of the lymph glands within three weeks of chemical exposure in the Gulf and even though Roberts had falsely reported that 11 of 33 men in his unit had developed such lymphomas.

Instead of refuting this sort of GWS nonsense, the Pentagon, apparently in an effort at appeasement, has foolishly abetted it. For example, it has said that as many as 100,000 troops may have been exposed to sarin nerve gas emitted from a demolished Iraqi bunker. Any expert on sarin could (and many did) tell the Pentagon that this gas begins to dissipate within seconds. The closest soldiers to the bunker blast were at least three miles away, and there were just a few hundred of them. The rest of the 100,000 were hundreds of miles away, giving the sarin days to dissipate into nothingness. To say these troops were "exposed" to nerve gas is like saying that anyone who has ever eaten a peach was "ex-

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HENRY PAYNE

posed" to cyanide, a tiny component of peach pits.

And now it has come to light that the Pentagon bypassed its normal bidding procedure by awarding a hefty $3 million research grant to Dr. Robert Haley of the University of Texas Southwestern Medical Center. Haley has long been a proponent of GWS, and when he finally published a study on it, in the January 15, 1997 issue of *The Journal of the American Medical Association,* he said the results supported his position.

Actually, all the study showed was that troops who had the most complaints also claimed to have had the greatest exposure to pesticides, vaccinations, and what-have-you. This is exactly what we would expect for psychosomatic ailments. Haley's study found no excess of illnesses that are not commonly related to psychological causes.

Numerous letters to *JAMA* blasted the study, including one saying Haley had "advanced from unmerited speculation to fantasy." Yet the Pentagon has now bent its bidding rules to fund further research by Haley—to the predictable cheers of GWS activists. Does this sound like a Pentagon conspiracy to cover up GWS? Or do we instead have a Pentagon desperately trying to placate its critics?

For all this, GWS advocates keep insisting that the Pentagon (and the Department of Veterans Affairs) be removed from GWS investigations. But what they really want to remove is scientific methodology. Enter Clinton's plan to appoint a sixth panel, one he can be certain will reach the "proper" conclusion.

Apparently there will be only five members. Heading the panel will be former Sen. Warren Rudman (R-N.H.), who has said repeatedly he intends to meet with veterans' groups, but has signaled no intention to meet with doctors and scientists. Nor has Rudman expressed any objections to the only other suggested panelist as of this writing, retired Navy Adm. Elmo Zumwalt III, the best-known propagator of the junk science behind the previous incarnation of GWS, the Agent Orange scare.

Like Gulf War vets who claim to be suffering from GWS, Vietnam vets blamed a bewildering array of symptoms on exposure to the herbicide known as Agent Orange. But to this day, scientists continue to monitor the Vietnam vets with the highest Agent Orange exposures and find that they have no more medical problems than people with no exposure.

No doubt Zumwalt will claim to have an open mind on GWS. That's what he said about Agent Orange when Congress charged him with reviewing the evidence in 1990. Yet four years before that appointment, Zumwalt had co-authored a book in which he said he was "convinced" that "Agent Orange can cause cancer and birth defects, and in the case of many Vietnam veterans, has done precisely that."

Actually, no speculation as to Zumwalt's GWS bias is needed. In 1995 he told *Life* magazine that Gulf vets "need to keep the pressure on, because in the case of Agent Orange—and I'm sure it'll occur with Desert Storm syndrome—the companies who stand to be found liable for any harmful effects will be in there lobbying." As to how far Zumwalt will push his position, consider that he had the chutzpah to claim that the report he gave Congress in 1990 linked Agent Orange to cancers that weren't even mentioned in the report.

With Rudman and Zumwalt as two-fifths of the panel, all Clinton has to do is appoint the obligatory Gulf vet who claims to be suffering from GWS. There's your majority; case closed.

GWS will never be a scientific or medical reality, but it will become—indeed, has already become—a political and popular reality. As with Agent Orange, hundreds of thousands of veterans who bravely served their nation in its hour of need will be tossed some scraps in the form of benefits. The only trade-off is that they will live the rest of their lives in terror of contracting—and perhaps even spreading to their families—a horrible illness that doesn't exist. ◆

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Growing Pains

The stunting of Silicon Valley's growth

By Brian J. Taylor

At a crowded meeting of the Santa Clara City Council last summer, residents spoke in quavering voices, their arms trembling as they tried to suppress their anger over a plan by Sun Microsystems, one of the area's largest employers, to build a new R&D facility. One woman read a speech in which she castigated the council members for destroying "open space" to make room for "yet another corporate parking lot." Several critics noted that council members who backed Sun's plan had bragged in campaign material of their support for environmental preservation. "Your integrity is at stake," declared an indignant young man.

Silicon Valley, well-known for both its environmentalist sympathies and its high-tech entrepreneurialism, is discovering what happens when those two tendencies collide. The Valley, which includes parts of Alameda and Santa Cruz counties along with most of San Mateo and Santa Clara, exports more goods than any other metropolitan area in the country. Santa Clara alone is home to such computer industry leaders as 3Com, Applied Materials, Hewlett-Packard, Intel, and National Semiconductor. These and other local businesses created 125,000 new jobs between 1992 and 1996.

The growth hasn't come without costs. Freeway congestion throughout the Bay Area begins earlier and lasts longer than ever before. Schools are being taxed to their limits by burgeoning enrollments. Residential and commercial real estate prices are soaring. Santa Clara County's median home price of $308,500 is the highest in the nation. Apartment occupancy levels hover between 99 percent and 100 percent, and it's often difficult to find a hotel room.

Such problems have helped build support for anti-growth—or, more accurately, anti-building—policies. A large majority of Valley residents favor open space preservation and urban growth boundaries, according to a December 1993 phone survey of likely voters by Gene Bregman and Associates, a national polling firm based in San Francisco. Seventy-four percent of respondents wanted to preserve baylands and wetlands, 69 percent wanted more land set aside for wildlife preservation, and 68 percent wanted to prohibit development on hillsides.

In an October 1995 poll of San Jose residents, 74 percent said the city should adopt a "greenline," defined as a "fixed border between urban development and open space" that "would keep new growth in areas with pre-existing services." The San Jose City Council has since adopted that policy.

Terry Feinberg, executive director of the Tri-County Apartment Association, a developers group, notes that supposedly environment-friendly greenlines push housing to the other side of the boundary, requiring the new development of rural land and keeping cars on the road longer by increasing commuting distances. Restrictions on growth also raise housing costs, exacerbate the housing-to-jobs ratio, and increase traffic congestion by preventing road construction. Not incidentally, these effects make life harder for people who work in the Valley.

Oakland computer programmer Jay Shaw's 10-mile commute to his job in Berkeley already takes more than half an hour. "I'm as much of an environmentalist as the next guy," says Shaw. "I love the outdoors—but not if that means I have to travel at a rate of 20 miles per hour."

Palo Alto financial analyst Todd Parmacek also loves the outdoors, especially the nearby hills and valleys, but he is fed up with the rising cost of living in Silicon Valley. He was forced to give up his search for a house in 1997 because the prices kept rising, and he even had difficulty finding the one-bedroom apartment where he now lives. "Sometimes environmental policies aren't reasonable," he says. "Development can't stop."

I can identify with Parmacek. When my wife accepted a job in Palo Alto a few months ago, we looked forward to saving money on rent, thinking we would have no problem finding a comparable two-bedroom apartment for less than the $1,000 we were paying in New York City. We were wrong. After a few disheartening days, we were relieved to find a one-bedroom apartment for $1,150.

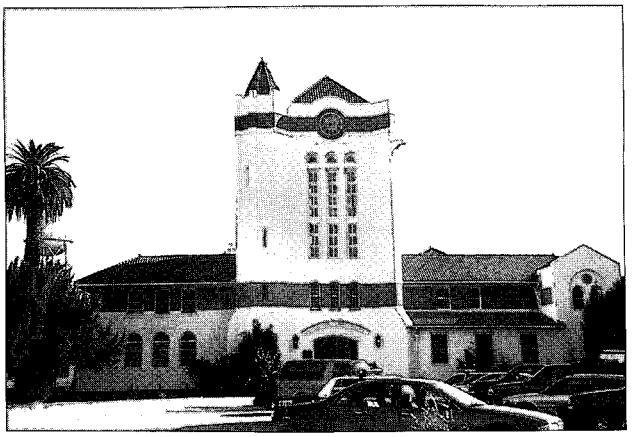
Organizations such as the Greenbelt Alliance and the Sierra Club want to discourage newcomers like my wife and me. They are committed to creating more urban growth boundaries and getting people out of their cars, even if that means restricting jobs and housing. The Sierra Club opposes building new highways or adding new lanes to existing roads if that would facilitate more traffic. "We don't feel we can crowd everyone into this area," says Sierra Club member Aurelia Winsemius. "If we do keep expanding, we'll ruin our air, water, and infrastructure."

Craig Breon, an environmental advocate at the Santa Clara Valley Audubon Society, is a member of an informal environmental network seeking to halt development in the Valley. He drives all over the area speaking at city council, water district board, planning commission, and parks commission meetings. "I get embittered and despondent," says Breon, "and at times get too strident and emotional." He says an Audubon board member is about to resign, and friends and fellow environmentalists are leaving the Valley in disgust. "You can't be around here and not feel the pain," he explains.

Like Breon, the Sierra Club's Bill Michels doesn't like the increasing development and traffic congestion. A native of Palo Alto, he feels betrayed by his city, which he says "created me as an environmentalist." Michels opposes the chemical processes involved in building computers,

the environmental laws in the countries where many of them are manufactured, and the use of computers by multinational corporations and the military. He works for Sun Microsystems.

Sun, which has 11,000 employees in the Bay Area, wants to build a 1-million-square-foot, $230 million research and development complex on the site of the former Agnews Developmental Center West Campus in Santa Clara. In November 1996, the company arranged to purchase 82.5 acres of the 331-acre site from the state of California for $51 million. It planned to build nine new buildings for 3,200 workers, incorporate three of the existing structures into the R&D campus, and raze the remaining 54 buildings.



Sun Microsystems faced fierce opposition when it tried to convert the Agnews mental hospital site into an R&D campus. Increasing hostility toward development may curb Silicon Valley's growth.

BRIAN J. TAYLOR

But opponents claimed Agnews is rich in history and should be preserved. Known as the Agnews State Lunatic Asylum in the 1880s, it was destroyed and rebuilt after the 1906 earthquake. An on-site cemetery contains the remains of 119 people who died in the earthquake. More recently, Agnews became a home for the developmentally disabled. The last of its patients moved out in 1995. A homeless shelter operates out of one of the buildings, and the rest have been abandoned.

Liz Holmes and her 19-piece big band ensemble had been using one of the abandoned Agnews buildings to rehearse when she learned Sun was buying the property. Not wanting to see the buildings razed, she spent hundreds of hours fighting Sun's project as a member of the Agnews Preservation Coalition. In addition to attending city hearings, she documented and photographed each building on the property and succeeded in getting the Agnews complex listed in the National Register of Historic Places, which she hoped might confer some legal protection on the buildings. It didn't.

But before consummating the deal, Sun had to get rezoning approval from the city, a process that took four consecutive weeks of hearings and over 20 hours of public comment before a final vote was taken. While critics such as Holmes decried the plan on preservationist or environmentalist grounds, many residents of the area near Agnews welcomed the Sun project. They hoped it would bring the neighborhood amenities such as a grocery store, a gas station, an elementary school, and a library.

At the city council meeting, Councilwoman Patricia Mahan criticized the Sun deal for almost an hour, proposing several amendments to help "mitigate" the project's cultural, environmental, and historic impact. A few of them passed, including one requiring Sun to pay somebody $20,000 to write a book on the history of Agnews. It was past 2:30 a.m. when the council finally approved the Sun project by a 4-to-3 vote.

The saga still isn't over. The Agnews Preservation Coalition has filed a lawsuit contesting Sun's environmental impact report, and a signature drive is under way for a city-wide referendum to overturn the council's vote.

The Sun expansion is not the only local project that has encountered resistance from opponents of growth. Residents of Oakland have filed a federal lawsuit to halt port expansion. Plans to expand San Jose International Airport provoked hours of angry public testimony at planning commission meetings, as nearby residents complained about a likely increase in noise levels and what they believe will be a deteriorating quality of life. In November, Palo Alto voters approved a ballot measure to widen Sand Hill Road, a major thoroughfare famous for its concentration of venture capitalists. But the neighboring city of Menlo Park has filed suit to challenge the project's environmental impact report, claiming the likely effects of expansion on traffic and the environment were understated.

The increasingly hostile environment seems to be having an impact on expansion decisions by local businesses. Sun, while still a dominant presence, recently decided to open two new campuses far away: one in Broomfield, Colorado, the other in Burlington, Massachusetts. Far from protesting, these cities welcomed Sun with millions of dollars in tax credits. Sun says development costs were a factor in its decision to expand outside the Valley; land near the company's proposed Santa Clara campus can cost as much as $1 million an acre.

Many other Valley heavyweights, including Hewlett-Packard, Intel, 3Com, and National Semiconductor, are scattering plants across the country and around the world, from Malaysia to Ireland. Intel reportedly received $100 million in tax credits to open a plant in Rio Rancho, New Mexico. "Many companies are choosing not to locate here," says Leslee Coleman, vice president of the Santa Clara County Manufacturers Group, which represents 120 of the largest companies in the area. While she says there is still room for development, Coleman concedes the cost of land and the overcrowded roads pose challenges. Acknowledging the political climate, she says her group supports greenlines and affirms the need to "grow smart."

Jim Tucker, director of economic development at the San Jose Metropolitan Chamber of Commerce, says he's not worried: "This is *the* Silicon Valley—if you want to be in the mainstream, you come here." But Feinberg, head of the builders association, offers a bleak prognosis: "Demand is increasing, the opposition is getting stronger, and cities are getting greedier." He warns that cities "better find a way to house the workers if they want economic progress to continue." And while the Sierra Club tries desperately to keep cars off the road, Santa Clara Chamber of Commerce President Betty Hangs notes, "If there was no traffic, there would be no jobs." ◆

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Title IX from Outer Space

How federal law is killing men's college sports

By Walter Olson

"Giving Women a Sporting Chance: Cal State Plan Could Be a Template for Nation" jubilated a *Los Angeles Times* editorial. The month was October 1993, and the California State University system had just agreed to settle a National Organization for Women lawsuit by adopting a quota system for varsity sports participation, promising that women's share would come out within 5 percentage points of female enrollment at each of its 19 campuses.

According to the *Times*, this "welcome commitment" would put Cal State in the "vanguard of reform," for which its administration was "to be commended." "Gender fairness in sports is really not that difficult to comprehend," explained the *Times*, with that touch of condescension that so grates on non-feminist ears. "Too many athletic departments just don't"—can you tell where this sentence is headed?—"get it."

The settlement's compliance deadline was set for fall 1998, and by mid-1997 one of its results had become clear: massive cuts in men's sports throughout the Cal State system. In June, Cal State-Northridge dropped its baseball team, which had ranked among the nation's top 20, along with soccer, swimming, and volleyball. Cal State-Bakersfield drastically curtailed its outstanding wrestling program. San Francisco State, Fullerton, Hayward, Chico, Long Beach, and Sonoma all got out of football.

The Cal State-men's-sports massacre made news from coast to coast, and for good reason: As the *Times* headline predicted, it *is* going to serve as a model for the rest of the country. Last April, the U.S. Supreme Court declined to review a court decision against Brown University, leaving in place an interpretation of the federal Title IX law that has already begun to devastate such men's sports as track, wrestling, swimming, and diving nationwide. A survey by the National Collegiate Athletic Association found colleges have axed 200 men's teams in recent years, with 17,000 slots lost. Gymnastics teams, which numbered 133 as recently as 1975, are down to 32 overall. Even golf, a sport whose popularity in the outside world has soared, is hard hit.

The next targets for Title IX enforcers are elementary and secondary schools. Already, many high schoolers in Florida face a ban on all athletic competition because their schools haven't done well enough at equalizing sports participation. Armed with a 1992 Supreme Court decision which allows complainants to demand cash damages as well as lawyers' fees, litigators and regulators are swarming around the field house.

The premise of the gender-equity movement is simple: Women's sports should get just as much money, attention, and participation as men's. It's a lovely ambition, acceptable in the end to most college administrators as well as most social reformers. Only two obstacles remain: the fans and the participants.

College football, to begin with, is a huge business, generating fortunes in alumni donations, gate receipts, and broadcast fees. Yet it won't have a real female equivalent as long as women are free to avoid it. (Neither forced watching nor forced playing has yet arisen on the Title IX agenda.) Even aside from male-female differences in strength and stature, extremes of physical competition and the buzz of danger just don't play the same role in women's lives as in men's, either as players or as spectators. As *National Review*'s Kate O'Beirne has pointed out, men made up a substantial majority of the television audience for the women's NCAA basketball finals.

In questionnaires of prospective Brown students, 50 percent of the men but only 30 percent of the women expressed interest in trying out for athletics. Intramural sports were open to all at Brown, but eight times as many men took part as women. Nor is it easy to argue that the dead hand of bygone male supremacy is the problem. Women at Vassar participate in varsity sports at a rate 13 percent lower than do men, even though Vassar was a women's college until 1969.

"Including football in counting the numbers is unreasonable," Olympic high jumper Amy Acuff told one reporter. "At my school [UCLA], they cut men's swimming and gymnastics so they could start water polo and soccer for women. It broke my heart because those men's teams were really good, and a lot of the women they brought into the new sports weren't serious athletes." (The defunct UCLA diving and swimming program had garnered 16 Olympic gold medals and 41 individual national titles.)

Tough, say the hard-liners at the U.S. Department of Education's Office of Civil Rights, which "has exhib-

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HENRY PAYNE

ited an astonishing indifference to the destruction of athletic opportunities for males," according to University of Chicago wrestling coach Leo Kocher. Anyone at all can file a complaint that triggers an OCR investigation, and such probes, as Pittsburgh *Post-Gazette* sportswriter Lori Shontz observes, are not always known for their sophistication and subtlety. Staffers who swooped down on Johns Hopkins University, for instance, demanded to know why the women's basketballs were smaller than the men's, not realizing that "women's basketballs are smaller by design to accommodate smaller hands."

As usual in Washington, the quota-enforcers heatedly deny that quotas are actually mandatory, insisting that schools can comply by passing one of two other tests. They can show that women are satisfied with existing offerings—but then a complaint itself is apt to serve as evidence of dissatisfaction. Or schools can show a pattern of continued expansion of women's programs, which is to say continued progress toward proportionality. In practice, according to the American Football Coaches Association and other critics, proportionality is the "primary emphasis of enforcement," and the other two tests, though they may furnish the regulators some facade of deniability against quota charges, offer no enduring safe harbor of compliance.

In the Brown case, the federal court rebuffed the university's effort to offer evidence that men were more interested in athletics. Are women's teams undersubscribed and men's oversubscribed? Then a university must have fallen short in finding ways to make the women's programs attractive. Is it easier for women at a given level of achievement or commitment to obtain athletic scholarships than it is for men? Too bad: The university may lose anyway, unless it's brought the overall head count into line.

Nor can educators necessarily get off the hook by pointing to other demographic or behavioral variables. The student body at Cal State-Bakersfield, reports Elizabeth Arens in *Policy Review*, is 64 percent female and includes many women in their 40s and 50s who are upgrading their education after launching families and disinclined to pursue varsity sports.

"The women's advocacy groups strongly oppose any effort to survey interest in athletics because they do not like the results," charges Chuck Neinas, executive director of the College Football Association, who says the current state of legal interpretation "will make it difficult, if not impossible, for those universities that sponsor football to comply with Title IX."

Feminist litigators make little secret of their animus toward football, many evidently agreeing with University of Wisconsin-Milwaukee professor Margaret Carlisle Duncan that it's "an institution that promotes male dominance." Where it can't be axed entirely, they favor at least reducing the number of players on rosters, as Cal State-Fresno and other institutions have reluctantly done. College teams play with larger rosters than the pros, partly because they can't rely on mid-season signups or trades to replace sidelined regular players.

The premise of the gender-equity movement is simple: Women's sports should get just as much attention, and participation, as men's. It's a lovely ambition, against which only two obstacles remain: the fans and the participants.

Ironically, colleges with standout football teams, being flush with revenues for scholarships and equipment, have the easiest time expanding women's sports. Although top-division football as a whole makes money, it is made unevenly, with some strong teams raking in the receipts and others running deficits. Title IX activists urge colleges to boot money-losing pigskin teams, though it seems unlikely that a conference whose cellar-dwellers dropped out could for long achieve a Lake Wobegon effect and consist entirely of teams with favorable win-lose records.

In any event, the head count, not money, is what's often really at legal issue. Wrestling is among the least expensive sports to sustain. Princeton refused to accept a $2.3 million alumni gift intended as an endowment to save its 90-year-old men's wrestling team, just as the University of Southern California did when alumni tried to save its men's swimming program. Roster cutbacks for "big" men's sports, a common feminist proposal, aid compliance efforts not so much because they save pots of money—the non-star "walk-ons" dropped are typically already playing without scholarships, travel, or equipment subsidies—but because they keep down the number of male bodies.

Of course, the Equal Employment Opportunity Commission can't resist making things worse. Last October, it put out new guidelines arm-twisting colleges to pay coaches of women's teams as much as they do men's. The guidelines do start with a token concession that not every volleyball coach may be entitled to the salary of a Big Ten football wizard, but from then on it's mostly bad news. Comparisons between dissimilar sports? No problem. Offers based on market rates or current pay levels will be suspect: "Cultural and social factors may have artificially inflated men's coaches' salaries."

The guidelines hint that if colleges can't show that they've advertised and promoted men's and women's squads equally, women's coaches should win salary-dispute cases. Of course, to hype a fanless team may be to throw good money after bad: In one well-known case, the USC men's basketball program brought in 90 times as much revenue as the women's. The agency also suggests a college may lose a case if it "sets up weekly media interviews" for a red-hot men's team but not its languishing female equivalent.

In the whole Title IX controversy, incidentally, it appears next to impossible to find anyone willing to criticize the law in principle. Sure, enforcement has gone haywire and the results are crazy, but everyone hastens to add that of course they just adore the law itself.

As for the old idea that universities in a free society should be entitled to make their own decisions—well, that notion, like so many men's track teams, is on its last lap.

Contributing Editor Walter Olson (hambo @eci.com), of the Manhattan Institute, is author of The Excuse Factory *(The Free Press).*

Fat Chances

By Jacob Sullum

The Fat of the Land: The Obesity Epidemic and How Overweight Americans Can Help Themselves, by Michael Fumento, New York: Viking, 330 pages, $25.95

Eat Fat, by Richard Klein, New York: Vintage, 272 pages, $13.00 paper

A few years ago the National Center for Health Statistics reported that one-third of Americans were obese in 1991, compared to one-fourth in 1980. You might have seen the front-page article in *The New York Times.* Perhaps you shook your head and thought, "Those poor fat bastards."

Not so fast. Michael Fumento wants you to know that obesity, "defined as being at least 20 percent fatter than [you] should be," is only part of the story. "According to the Institute of Medicine of the National Academy of Sciences," he writes on the first page of *The Fat of the Land,* "about two thirds of us are too heavy for optimum health." *Two-thirds.*

I hope I have your attention now. Do you remember the last time you looked at that weight table in your doctor's office? You probably thought, "*Come on.* Nobody stays in that range once they get out of college." In fact, according to survey data from 1996, 74 percent of Americans exceed their maximum recommended weight. "So instead of talking about a third of Americans being at risk because of being overweight," Fumento writes, "we really should be talking about somewhere around *three fourths.*"

Worse, it turns out that the current weight table, based on 1983 figures from the Metropolitan Life Insurance Company, is relatively lenient. The 1959 table allowed even fewer pounds. The targets were changed as Americans got fatter—for no good reason that Fumento can see. Like the Center for Science in the Public Interest, he seems to prefer the older, stricter table, which better reflects the weight ranges associated with the lowest mortality rates. So we really should be talking about ...nearly everyone, I guess.

Fumento, a medical journalist, resident fellow at the American Enterprise Institute, and former REASON science correspondent, has tackled many overhyped or imaginary hazards in his books and articles, including heterosexual AIDS, radon, electromagnetic fields, pesticide residues, and secondhand smoke. He has argued tenaciously and persuasively that highly publicized "illnesses"—Gulf War Syndrome and multiple chemical sensitivity—do not exist. Now, having lost 25 pounds of extra weight after years of trying, he turns to obesity, and his message is: It's worse than you think.

This might seem like a bold thesis, given our national obsession with thinness. To most Americans, though, weight is primarily a matter of physical attractiveness, and Fumento emphasizes its impact on health, including an increased risk of heart disease, high blood pressure, diabetes, and certain cancers. Furthermore, he argues convincingly that false beliefs about the causes and consequences of obesity help explain why Americans keep getting fatter despite their preoccupation with weight. Having digested a mountain of research, he takes on the cranks, hucksters, activists, and government officials who help perpetuate these misconceptions. Unfortunately, in his single-minded pursuit of the facts, he neglects the role that values, tastes, and preferences play in decisions about diet and exercise.

Maybe you've put on a few pounds—moved up a pants size, started to round down when asked your weight—but you figured it was purely an aesthetic issue. Wrong. The latest research shows that being even just a little overweight can shorten your life. "Unless you are affecting your immediate health (such as some anorexics do) one cannot be too thin," Fumento writes. "Making yourself little but skin and bones is not healthy; being below average weight in a country where most people are overweight *is* healthy." Judging from the results of one study, "the average woman weighs 30 pounds too many to have a full life expectancy."

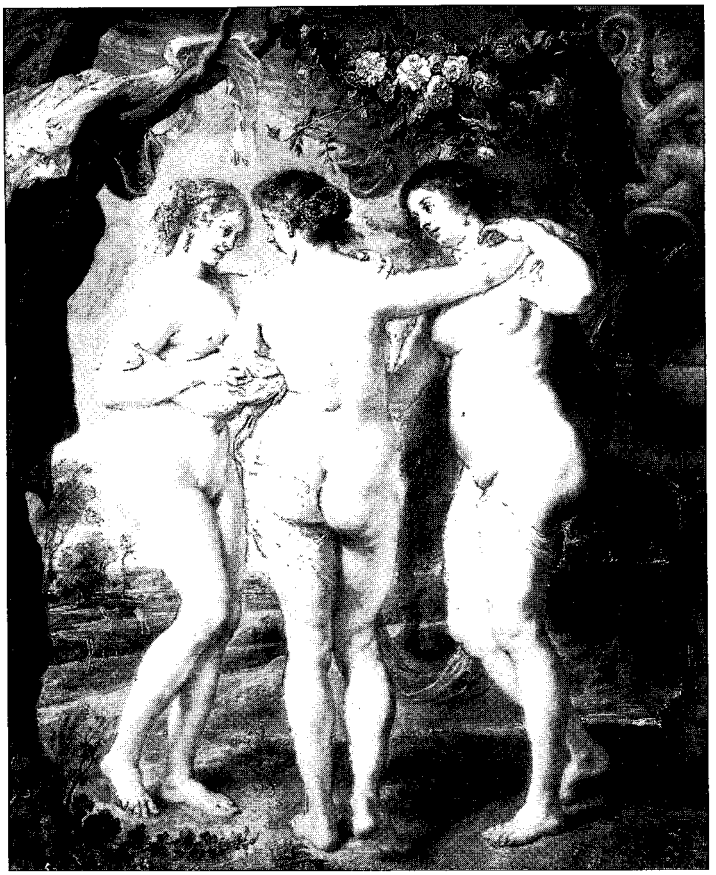
Are you depressed yet? Maybe you're just annoyed. Maybe you're wondering, "What's 'a full life expectancy'? How many years will I lose because of an extra 10 pounds?" You will not find the answers to such questions in *The Fat of the Land.* Fumento gives us an annual death toll (300,000) and the increase in mortality associated with certain weight ranges in a couple of studies. But he never gives us an idea of the lifetime risk facing someone who does not quite fit into the appropriate range on the 1959 Metropolitan Life Table.

It's a telling omission, because this is the sort of information you'd want if you were trying to decide whether losing those extra pounds and keeping them off would be worth the effort and forgone pleasure. For Fumento, the answer is obvious: *Of course* losing weight is worth it. After all, this is a matter of *health.* He never concedes that people could rationally accept the risks of being overweight in order to eat as much as they want and skip all that dreary exercise. He is dismayed by "an obese friend" whom he encouraged to lose weight with the help of prescription diet drugs: "But nothing doing. He's a gourmet; food is an integral part of his life and he wasn't going to give up any part of it." Imagine!

Fumento seems to start from the assumption that physical health trumps all other values, that it's irrational—and, indeed, immoral—to trade longevity for pleasure. It's not clear how far he would push this premise. There is some evidence, for instance, that severe, long-term calorie restriction can extend your life span. It works in mice, anyway. A UCLA researcher recently told *The New York Times Maga-*

zine that an 18-year-old man who sticks to a spartan diet of 1,800 calories a day (vs. the recommended 2,000 to 2,500) "would have a chance of living to 160." Suppose this is true. Should all of us adopt such a diet? If we are not willing to be hungry most of the time for a chance at a few extra decades, are we crazy?

Fumento not only condemns heftiness, he pathologizes it, leaping from the observation that being overweight increases the risk of certain diseases to the conclusion that being overweight is itself a disease. It is "the underlying disorder," "a chronic illness," "one disease that can just keep getting worse and worse," "a national epidemic." A disease is something inherently undesirable; no one in his right mind *wants* to be sick. The disease metaphor therefore reinforces the idea that no sane person could prefer to be fat, given the alternative of eating less and exercising more.



On the constructive side, Michael Fumento offers sound but unsurprising advice for Rubenesque (or just chubby) people who want to slim down and are prepared to face reality.

Since a disease is also something that happens to you against your will, it's puzzling that Fumento adopts this terminology, because his message is mainly one of individual responsibility. Over and over again, he stresses that people are overweight because they eat too much and don't exercise enough. The fact that Fumento has to argue this commonsensical point is a measure of the flimflammery and magical thinking fostered by the desire to lose weight.

"Telling people to eat less and exercise more might send them fleeing for the hills," he writes, "so the diet book authors and women's magazines search valiantly for some aspect of eating to blame, some way of telling people they can stuff their faces—and still lose weight." Intelligent, well-educated people will plunk down $25 for a book that claims you can lose weight by eating chocolate, or cutting out fat, or cutting out carbohydrates, or eating foods in certain combinations, or eating as much as you want of whatever you want. If you know some of these people, you may want to give them copies of Fumento's eminently sensible book instead, before they fall for the latest fad.

Fumento is at his best debunking nonsense, and his chapters on diet gimmicks and "Big Fat Myths" are thorough, informative, and entertaining. He refutes the notion, promoted by government-required labeling as well as diet gurus and food manufacturers, that limiting fat is the key to losing weight. It's true that one gram of fat has more calories than one gram of carbohydrate or protein, so reducing your fat intake may reduce your total caloric intake, thereby helping you lose weight. But calories are the bottom line: If you eat virtually no fat but take in more calories than you burn, you *will* gain weight, no matter what Susan (*Stop the Insanity!*) Powter says. Furthermore, Fumento reports, there is no evidence that restricting fat to 30 percent of your calories—a goal urged by the federal government—will have any effect on your risk of heart disease.

Fumento argues that the 30 percent formula and the general fixation on fat distract people from the fundamental importance of total calories. "The government doesn't say *how many* calories the fat should be 30 percent of," he notes. "Thus, some people, bizarrely enough, have taken this to mean it's OK to eat more calories just in order to reduce the percentage from fat." One diet book author "says it's OK to order a fatty (and high-calorie) sandwich or side order at a fast-food restaurant so long as you drink enough orange juice along with it." Similarly, "low-fat" foods may have just as many or nearly as many calories as the regular versions. Even when they are significantly lower in calories, the advantage may be erased by people's tendency to eat more than they otherwise would. Writes Fumento, "Low-fat and no-fat foods are a Siren call to gluttony."

Fumento debunks easy excuses as well as easy solutions. He discredits the notion that your "setpoint"—the weight where your body "wants" to stay—is an insurmountable barrier. While your metabolism does tend to adjust over the short term to maintain a given weight, he says, the fact that formerly slim people get fat to begin with shows that behavior can overcome this tendency. He notes that the setpoint excuse is pushed by "fat acceptance" advocates who had to defeat their own setpoint again and again to reach their enormous girth. These activists assert that losing weight is not only futile but harmful, that the risks of obesity are outweighed by the risks of "yo-yo" dieting. Fumento shows there is little basis for this claim.

Fumento also refutes the idea that your weight is determined by your genes. Whatever the role of heredity, he says, it clearly cannot explain the dramatic increases in obesity we've seen in recent decades. "There are genetic differences, but they aren't things that can't be overcome by

MUSEO DEL PRADO, MADRID SPAIN / GIRAUDON, PARIS / SUPERSTOCK

eating right and getting exercise," one researcher tells him. "A lot of my patients say they're exercising regularly and eating very little, and I look them square in the face and tell them they're violating the laws of physics."

Fat activists like to cite studies in which self-reports indicate that obese people don't eat more than thin people. But as Fumento notes, what these studies really reveal is one of epidemiology's dirty little secrets: Subjects lie. To be more charitable, their recall is skewed in a direction that reflects favorably on them. The more unhealthy their habits, the greater their tendency to misremember.

On the constructive side, Fumento offers sound but unsurprising advice for chubby people who want to slim down and are prepared to face reality: Lose weight gradually; exercise regularly; make changes in your lifestyle you can stick to in the long run; fill up on foods rich in fiber; cut out needlessly caloric beverages; learn to distinguish true hunger from mere appetite; watch portion sizes and don't habitually clean your plate; don't rely on food for emotional support. He draws effectively on his own experience to illustrate the pitfalls of weight loss and motivate the discouraged.

The downside of Fumento's personal stake in this topic is that he sometimes displays the zeal of a convert, with rhetoric reminiscent of the anti-smoking movement: "Overeating kills....most fat people desperately do not want to be fat....obesity is a socially contagious disease." He decries "the overveneration of personal autonomy" and criticizes those who "acknowledge obesity as a personal health problem but deny its importance nationally, thereby relegating it to a simple matter of choice and assumption of the risk."

This sort of talk makes me a little nervous. It's not that Fumento himself advocates much of a role for government in "the battle against obesity." He explicitly rejects the idea of imposing special taxes on "unhealthy" foods, and I doubt he would endorse, say, a ban on fast-food commercials. The specific policy changes he does recommend are unobjectionable: scrapping the "calories from fat" and "total fat" labeling requirements, revising official dietary recommendations, improving nutritional instruction in public schools.

But Fumento is a bit too comfortable with the puritans at CSPI and with public-health types like Yale obesity maven Kelly Brownell, who advocates better eating through taxation and compares Ronald McDonald to Joe Camel. More to the point, paternalists will be a bit too comfortable with this book, and they will be perfectly happy to take Fumento's arguments further than he does. By marking out an area—overeating and underexercising—where people's behavior is presumptively irrational, he undermines the utilitarian case for individual freedom.

Richard Klein recognizes the busybody implications of the imperative to be thin. "Big brother lies at the end of the dreams of some of those who want us, at all cost, to be healthy, slim, and beautiful,"

When Richard Klein rhapsodizes about a fat-laden breakfast at an Ithaca diner or cognac-soaked prunes stuffed with foie gras, he is making a case for pleasure as a value to be weighed against the benefits of always watching what you eat.

he writes. A professor of French at Cornell, Klein is best known for his 1993 book *Cigarettes Are Sublime*, which sought to explain the cigarette's appeal to an increasingly tobaccophobic society. He attempts something similar in *Eat Fat*, a 1996 book that will be out in paperback this year. Klein reminds us that fat, like tobacco, was not always hated. At various times in history, plumpness was considered fashionable and desirable, a sign of affluence and beauty. Fat things were rich, fertile, abundant, nourishing.

Now that thinness is the ideal, we are all getting fat. "But rather than regret this trend, as many with alarm so often do," Klein writes, "we ought to consider that what is actually happening might just have some good reason to happen. Perhaps we are all supposed to be getting fatter, since that's what we're doing anyway, despite all our efforts to the contrary....But instead of our celebrating what we are in fact becoming, the shrill voice of skinny is heard across the land, magnified by the chorus of doctors, nutritionists, beauticians, and insurers of all kinds who deplore what we already despise."

The "shrill voice of skinny" comes through clearly in *The Fat of the Land*, and *Eat Fat* is a useful supplement, offering a perspective that is missing from Fumento's book. When Klein rhapsodizes about a fat-laden breakfast at an Ithaca diner or cognac-soaked prunes stuffed with foie gras, he is making a case for pleasure as a value to be weighed against the benefits of always watching what you eat.

Concerning Kelly Brownell's policy proposals, he writes, "Nowhere in all this talk of taxing fat food do we hear a single good word for the blessing of chocolate, the balm of chicken soup, or the comfort of a nicely schmeared bagel." Though Klein quit smoking while writing *Cigarettes Are Sublime*, he apparently does not plan to slim down anytime soon.

By reminding us that standards of beauty have changed dramatically over the years, ranging from Rubens's zaftig nudes to the emaciated women in today's clothing and perfume ads, Klein calls our attention to the arbitrary dictates of fashion that drive so many to despair. By focusing on our paradoxical tendency to get fatter and fatter as our models get thinner and thinner, he suggests some troubling psychological truths. And by wondering how dangerous a few extra pounds really are, he raises a legitimate question for those who insist that we stick to our recommended weight range.

Too often, however, Klein's skepticism lapses into dismissiveness or self-delusion. While he concedes that obesity can seriously threaten one's health (as he witnessed in the case of his own mother), he insinuates that the evidence is not what it's cracked up to be. "The medical risk of obesity, this book aims to suggest, has been severely overstated," he says in the preface, but he never substantiates that claim. And while Klein, like Fumento, decries the low-fat/no-fat fallacy ("It's not eating fat that makes you fat," he says, "it's eating"), he repeats several of the fat-acceptance myths that Fumento so ably deconstructs, includ-

ing the futility of losing weight, the hazards of yo-yo dieting, and the idea that many people are fat because of slow metabolisms, not because they eat too much. So if *Eat Fat* is an antidote to *The Fat of the Land*, the reverse is also true.

More broadly, Klein and Fumento offer competing visions of how one ought to live, and each is worth considering. But lurking in the background is a hint that persuasion might give way to coercion. Klein is quite sympathetic to the fat-acceptance movement that Fumento rightly criticizes for contributing to "the cult of victimization"; it's not hard to imagine him supporting legislation or litigation aimed at forcing businesses to "accept" and "accommodate" the obese.

Fumento, for his part, is aware that his book could be taken as a call for the government to wage a war on obesity. "Nobody's arguing that it should be illegal to be such a glutton and such a sloth that you can't get around without an electric scooter," he writes. Although I'm sure this was meant to be reassuring, it had the opposite effect on me. Fumento says "gluttony and sloth need to be demonized to the extent that cigarettes have been," but "this doesn't mean oppressing fat people." The precedent is not exactly encouraging.

Senior Editor Jacob Sullum (jsullum@reason.com) is the author of For Your Own Good: The Anti-Smoking Crusade and the Tyranny of Public Health, *forthcoming this spring from The Free Press.*

Is There Life After Race?

By Kanchan Limaye

The Last Plantation: Color, Conflict, and Identity: Reflections of a New World Black, by Itabari Njeri, Boston: Houghton Mifflin, 308 pages, $24.00

In 1991, while most of the nation was caught up in the Clarence Thomas-Anita Hill hearings and the Rodney King phenomenon, Itabari Njeri, then a reporter for the *Los Angeles Times*, was gripping her notebook throughout a tense murder trial. On March 3 of that year, Korean immigrant Sun Ja Du fatally shot a 15-year-old African American named Latasha Harlins. Harlins and Du had argued over a $1.79 bottle of orange juice in Du's Los Angeles grocery store.

It is this shooting and its aftermath that Njeri, a veteran chronicler of racial tensions, explores in *The Last Plantation.* She uses the story to argue that it's time for America to end its obsession with race. Njeri wants to redefine American identity for a post-racial age, and her provocative ideas will likely inspire some readers and infuriate others on both the left and right.

Njeri takes her readers on a *MacGuyver*-like chase through an L.A. whose every aspect seems racially charged, from its courts to its politics to its grief. This is a world populated by vivid characters, including Du's deal-making defense lawyer Charles Lloyd, calculating California assembly candidate and convicted extortionist Patricia Moore, fuming multiracial activist Velina Hasu-Houston, scholars Ibrahim Sundiata and Cornel West, and Latasha's little brother Joshua, who grows worrisomely quiet after his sister's death. Njeri often lets her characters tell the tale, quoting long conversations and entire segments of court testimony. But she also brings her own biography to bear.

A Brooklyn-born African American (she prefers the broader term "New-World Black"), Njeri is the offspring of a Guyanese-Jamaican-African mother and a father from the state of Georgia. Like many African Americans, she has a mixed heritage: African, East Indian, English, French, and Arawak. For almost a decade, as a reporter for *The Miami Herald* and the *Los Angeles Times*, she has written about color conflict, particularly between African Americans and a new generation of self-defined "multiracial" Americans, many of whom want political power and public funds of their own. Many African Americans, Njeri says, cleave to a "pure" definition of the black race and try to stomp out competing movements as a matter of political survival.

For her part, she concludes that the multiracial movement is just the latest manifestation of our unhealthy racial obsession and regards the attempt to add a multiracial category to the 2000 Census as not worth supporting. Indeed, Njeri hopes we can eventually do away with all racial categories. She italicizes the word *race* throughout her book to remind readers of her view that race, a concept that emphasizes differences, doesn't account for our daily miscegenated American experience. Nowadays, she argues, there isn't a single American black without white blood; a single white without black blood, and so on. While this may not be biologically true, as a metaphor for describing our mixed culture, it's useful.

Njeri is a staunch opponent of what she calls the "Li'l Dab'll Do Ya" school of racial thought, which assumes that even a drop of black blood makes an individual racially black. But Njeri carefully distinguishes her own hopes for America's cultural future from the old melting-pot myth, which she criticizes as a one-way street toward homogenized "Anglicization." In place of that cultural dead end, she joyously envisions "four-lane boulevards everywhere, with traffic in both directions and stylish cultural jaywalkers always making their mark."

But Njeri would have done well to examine that vision for contradictions. While espousing a culturally mongrelized society on one hand, she insists that African Americans must maintain cultural integrity on the other. There must be a way to do both, she says, but she never quite elucidates how. Doesn't "traffic in both directions" undermine the legitimacy of "cultural integrity"? Later, Njeri blames the "White Establishment" for using racial differences as a means of defining power and privilege. But she spends her whole book showing how people of other races do the same thing, demonstrating that people of any color can assume labels when it serves their interest.

Finally, when defendant Du is put on five-year probation from a 10-year sentence in a state prison, she concedes that the sentence is fair. But she later asserts that during the trial, it was Latasha who had been tried for her own death and found guilty, victimized by class biases and stereotypes of the "model minority" vs. the "shiftless Black."

The author isn't the only one contradicting herself when it comes to sticky racial issues; so do many of the activists and citizens she interviews. For example, Georgia state Sen. Ralph Abernathy III, sponsor of the Project RACE bill enacted by the state legislature in 1994, which recognizes a multiracial designation, calls for a colorblind millennium in one breath but in another declares, "I feel it is important that every race of people be acknowledged in their independent right." These contradictions highlight the competing human impulses at the center of the race debate—which is often less about color than it is about class or culture: We tend to associate with those whom, for whatever reason, we perceive as similar to ourselves. But we're also attracted to difference. So, what to do?

Njeri, long familiar with such contradictions in her own life, has found that syncretism yields the best solution. She grew up as an opera lover and even trained for a classical singing career, and as a result she was judged by her black peers as not black enough. Even so, the voice of Mahalia Jackson or James Brown on a Bermuda night stirs her to the core. Because she fit no physical stereotype, she says, she suffered alienation from many camps. Similarly, her light-skinned cousin Jeffrey spent his life trying futilely to be "the baddest nigger on the block," only to end up imprisoned and eventually shot dead in the street. In 1960, her physician grandfather, an NAACP integrationist in a small Georgia Klan town, was killed by drunken white youths as he drove home. When his fair-skinned wife arrived on the scene, a white bystander told her not to worry, "it was just a nigger." The youths, though identified, were never charged.

Such biographical details explain Njeri's own preoccupation with race, but not all the biographical material she has included supports her themes as well as she thinks it does. There are lengthy confessional forays—descriptions of highway panic attacks caused by the trauma of her grandfather's death, her allergies, her manic-depression—that are stuck between passages of reportage and analysis, distracting from the trial story and the compelling issues it raises. Njeri comes across as a passionate, humane—if conflicted—woman, but her melding of two genres—investigation and autobiography—is sometimes uncomfortable and prevents her from capitalizing on the dramatic potential of either.

Njeri carries around a lot of anger over her family's past, anger which erupts at unexpected moments with unexpected effects on her book. For example, a well-meaning politician tells her, "One day we'll look back and say, 'In the 1990's they had all these race categories. But in the year 3001 race is not so important. How stupid they were back then. Now we're all living in harmony. We're all one color.'" Njeri becomes furious, taking these utopian platitudes as espousals of the total obliteration of distinct identities. So she tries "not to slam the phone down on its cradle after thanking him for the interview." It's an overreaction born of rage, and while the author has admirably put forth her biases, she has also raised questions about her judgment.

But when Njeri eschews confession, *The Last Plantation* is filled with captivating passages, such as when she takes us to the scene of an event or examines cases like that of Velina Hasu-Houston, a black-Japanese-Blackfoot playwright who decides to become a multiracial activist after experiencing a variety of humiliating incidents.

A policeman calls Hasu-Houston a "half-breed bitch" as she holds her half Euro-American baby after someone crashes into her car; she finds that neither black theaters *nor* Asian-American theaters will produce her play about an African American and an Asian woman. (It doesn't occur to Hasu-Houston to court a theater that doesn't define its repertoire in ethnic terms.) Hasu-Houston's multiracial actress friends spend their time shuttling back and forth between casting directors, who study them as if they are museum artifacts and send them away. In this way, Hasu-Houston argues, the people who embody the "melting pot" ideal most are shut out everywhere they turn. As the rate of interracial marriages continues to rise, more Americans will find themselves in dilemmas like Hasu-Houston, rendering the practice of using racial categories to define ourselves and our public institutions increasingly impractical.

The practice begins to seem downright absurd when, as Njeri describes, blacks who consider themselves "pure" but who are, like her, of mixed blood, focus hostility on the growing number of "multiracial" Americans for trying to secure a public platform of their own. Pulling the strings of tension still tighter are the hostilities between African Americans and new black immigrants, who, Njeri reports, look down on African Americans for their lower level of socioeconomic success. Add to that the pigmentocracy within the African-American community itself, in which lighter-skinned blacks are often preferred and pursued as mates, and one begins to see how endless internecine tensions obscure the larger goal of social justice.

We are, after all, Americans—united by history, culture, and, yes, blood. Njeri says white Americans, particularly those who denounce pluralism for breeding Balkanization, need to step up and "make rhetorical perfume out of the phrase *the miscegenated American experience.*"

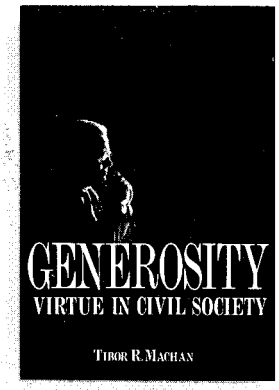
Domination, Njeri concludes, breeds insidious offspring: Oppressed people internalize the values of the oppressor, much like an abused child becoming an abusive parent. Thus their minds become "the last plantation." To complicate things, multiracial proposals like Georgia's Project RACE bill fail to define *who* is multiracial after the first generation. What happens to,

Itabari Njeri: Her book *The Last Plantation* parts the curtain on the problems of those left out of the standard racial debate and helps set the stage for a new dialogue.

say, the child of a Sioux-Italian-Korean man married to a Sioux-Italian-Korean woman? Must each parent be of a different race for the child to qualify? The whole concept of racial categories—much less inventing still more of them—suddenly seems silly.

As the book draws to a close, Njeri slips into serious depression after a rude Asian-American cabdriver tells her she isn't good enough to live in her upscale L.A. neighborhood. The depression is hastened, she says, by years of writing about topics in which anger and death were the lead characters. Maybe those dark experiences are what goad her to the conclusion that most of America's social problems stem from "the nihilism infecting the American soul." She argues that in a nation fed up with therapeutic jargon, many refuse to acknowledge the connection between larger social disorder and personal pathology. To solve America's social problems, she suggests, we should wed our pragmatic politicking to psychotherapy and religion. As an example, she takes us to St. Paul's church in Brooklyn, where the charismatic Rev. Johnny Ray Youngblood bolsters his repertoire of religious activities with counseling services to lift troubled souls out of despair and re-

JEFFREY



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engage those who have given up.

Njeri's racial vision and cultural daring are an important addition to an otherwise repetitive and defensive dialogue. She offers a view of our national identity that eschews both black-white bifurcations and the false promises of a multicultural mosaic. We are, after all, Americans—united by history, culture, and, yes, blood. Njeri says white Americans, particularly those who denounce pluralism for breeding Balkanization, need to step up and "make rhetorical perfume out of the phrase *the miscegenated American experience.*" Njeri needs a nudge, lest she herself fall into the *racial* trap. Her call should apply not just to white Americans but to *all* Americans. But even as it stands, her book parts the curtain on the problems of those left out of the standard racial debate and helps set the stage for a new dialogue.

Kanchan Limaye (krl8@columbia.edu) is a New York writer.

The Writerly Rand

By Walter Olson

Journals of Ayn Rand, edited by David Harriman, foreword by Leonard Peikoff, New York: Dutton, 727 pages, $39.95

Deep into the writing of *The Fountainhead*, with a third of the manuscript already finished, novelist Ayn Rand had the book's exciting climax all worked out. It was to consist of a public crime followed by a dramatic trial and vindication: slinky heroine/architecture critic Dominique Francon would gun down leftist social commentator Ellsworth Toohey, having finally figured out what a philosophical bad guy he truly was. Hero/master builder Howard Roark would then step forward and take the murder rap for her, and later would go free after a campaign organized by his friends.

J. Robert Oppenheimer (right) at a party at Los Alamos, New Mexico: The camaraderie there among scientists helped suggest the idea of Galt's Gulch in *Atlas Shrugged*. Interviews with Oppenheimer led Rand to develop the character of Robert Stadler, the good-scientist-gone-bad.

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Fortunately for two generations of admirers, Rand wound up tossing that working outline in favor of a far sounder way of bringing her plot to a climax (Roark learns the artistic integrity of his design for a housing project has been subverted, blows up the completed but vacant structure, gives a speech to jury, and gets off). Also jettisoned, according to editor David Harriman, was an apparent early idea of "prefacing each part of *The Fountainhead* with a quotation from Friedrich Nietzsche."

If you're surprised that anyone should care deeply about these matters one way or the other, you're a poor bet to shell out $39.95 for the 727-page *Journals of Ayn Rand.* Like the other posthumous Randiana that Dutton has been publishing in recent years under the guidance of Rand literary executor Leonard Peikoff—letters, juvenilia, and so forth—these journals make a less-than-ideal place to start for those not already closely familiar with the Russian-born author's work. Happily for the book's market prospects, the novels continue to command a huge and enthusiastic readership, and confirmed fans may find irresistible the opportunity to watch the shavings fly in Rand's fiction workshop.

Rand made her alternate world seem natural and inevitable to millions of readers, but in fact it was the result of enormous painstaking, its details frequently worked out from the false starts and blind alleys documented here. Peter Keating, Roark's mediocre foil in *The Fountainhead,* was originally planned to turn to drink and commit suicide, a pat fate indeed, while in early plans for *Atlas Shrugged* the appealing but naive Cherryl Brooks did *not* kill herself. Both plot changes worked to make the characters more memorable, while making the books emotionally tougher on readers. One wonders how *Atlas* would have turned out had Rand, a determined and lifelong opponent of religion, stayed with her early plan to give an important plot role to an intellectual Catholic priest who was to

have been portrayed sympathetically, "my most glamorized projection of a Thomist philosopher."

The journals begin in 1927 with the 22-year-old Rand, barely off the boat from St. Petersburg yet already in Hollywood and working for none other than Cecil B. DeMille, dashing off scenarios remarkably evocative of her later work. Among her very first projects, *The Skyscraper*, an "epic of construction," features a heroine who dances on a rooftop and ends up with the hero on a narrow girder, "almost naked in her follies costume...a terrific height above the city." Yes, *romantic* is a fair description.

Most of the early scenarios went unproduced or were ruined in the production, but Rand tore on, undiscourageable. "From now on—no thought whatever about yourself, only about your work," vowed the future avatar of "rational egoism." "You don't exist. You are only a writing engine."

As such quotes suggest, Rand's idea of what it meant to be an egoist never quite conformed to the outside world's. The idea that individualism is somehow a creed for self-indulgents and slackers, a fashionable dismissal in some circles these days, hardly describes her methods. "Life is achievement....Give yourself an aim, something you want to do, then go after it, breaking through everything, with nothing in mind but your aim, all will, all concentration, and get it."

The journals concentrate single-mindedly on active writing projects and will disappoint those who expect much in the way of commentary on the passing scene or current events. There are few mentions of Franklin Roosevelt or even of World War II. Also excluded from this volume are most personal reflections on friends and acquaintances, though it is piquant to learn that the author took her revenge on various executives at Bobbs-Merrill who had mispromoted *The Fountainhead* by casting them as Orren Boyle and the other appalling businessmen who figure among the bad guys in *Atlas Shrugged*.

In 1946, typically, the author was describing the writing of fiction as "my life purpose" and the thing "that interests me most," and the journals contain few hints of the highly influential future that lay ahead for her as a writer of nonfiction. Her comments about writing pretty much stop dead when she completes *Atlas Shrugged*: A whole shelf of nonfiction essays was to follow, but she seems to have dashed them off without the careful note taking and redrafting that typified her novels—either that, or the notes and early drafts of the nonfiction did not survive. So there's very little new here in the way of elaborations on her eventual creed of "Objectivism."

Fortunately, the journals furnish a deep popcorn bowl of sheer fan value, with everything from a time line on *The Fountainhead* ("when they meet, [publisher Gail] Wynand is 54, Roark is 37") to considerable light on the question of which real-life figures helped suggest which fictional characters. We more or less knew that Frank Lloyd Wright and Louis Sullivan were on Rand's mind when she drew hero Howard Roark and his burned-out mentor Henry Cameron, and the minor character Lois Cook is an obvious send-up of Gertrude Stein. But those who always wondered what Rand thought of H.L. Mencken will be tantalized by a cryptic note suggesting that he may have served as the model for the sympathetically portrayed critic Austen Heller in *The Fountainhead*. As for newspaper tycoon Wynand, Rand prepared for his characterization by digesting into notes (often quite entertainingly) a volume on the career of William Randolph Hearst.

Rand made her alternate world seem natural and inevitable to millions of readers, but in fact it was the result of enormous painstaking, its details frequently worked out from the false starts and blind alleys documented here.

And the villain Toohey? He seems to have been loosely based on Lewis Mumford, the architecture and urban critic

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whose once glistening reputation has been a-tarnish for decades now. Later on Rand saw famed British socialist Harold Laski address a public audience and decided he was even closer to her Toohey ideal than Mumford.

Rand left relatively few unpublished projects in any state of detail. Nothing became of a projected movie script for Hal Wallis which was to have told the story of the making of the atomic bomb, but editor Harriman argues plausibly that the extensive interviews she conducted with leading nuclear physicists left their mark on *Atlas Shrugged*: The sense of camaraderie among brilliant scientist-neighbors in rural Los Alamos, New Mexico, fondly recollected by many participants, helped suggest the idea of Galt's Gulch, while her interviews with J. Robert Oppenheimer led her to develop the character of Robert Stadler, the good-scientist-gone-bad.

There are also a few notes on a final projected novel, which was apparently to be quite different from her two blockbusters: Set in the fictional town of Athens, Maine, it was to be an inward and personal rather than world-historical story, a tale of unrequited love and of joy preserved amid adversity, with a great effort to capture in written form the spirit of music and dance.

There are also occasional pages here that will detract from Rand's reputation or remind readers why she has had so much trouble making it into the mainstream. A 1948 note finds her musing that of all the bad characters in life, "the most vicious ones...the truly evil, are those who watch with cautious interest, the safe-players and middle-of-the-roaders." Then there's her fondness for the anti-social personality: "he was born without the ability to consider others" she says of Roark, intending that as praise.

Easily taking the prize for the worst piece in the Rand canon is a plan, fortunately never published until now, for what would have been her first novel. Titled *The Little Street*, it is indeed a dreadful misfire, combining chunks of undigested Nietzscheanism, a detestable hero, and a bristling hostility toward anyone and everyone who can be regarded as ordinary and obscure and thus, in the eyes of its 22-year-old author, a failure.

As Peikoff points out in his reverent but useful foreword, Rand did learn better, eventually even mustering some degree of benevolence toward the "honest average man" who fell short of matching her heroes' deeds. But as these pages document, one of the greatest struggles in this epic life was the struggle to overcome her own earlier views.

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One for the Gipper

By John J. Pitney Jr.

Ronald Reagan: How an Ordinary Man Became an Extraordinary Leader, by Dinesh D'Souza, New York: The Free Press, 292 pages, $25.00

Most of this fall's college freshmen were born in the year that Ronald Reagan won the White House. These 18-year-olds have only blurry memories of his presidency, which ended when they were in the third grade. Their knowledge about this period comes mainly from books and popular culture, which should worry the Gipper's admirers.

Go to a library's Reagan shelf, and you'll see such titles as *The Acting President*, *Gambling With History*, *Make-Believe*, *The Reagan Detour*, and *Visions and Nightmares*. Rent some political movies at Blockbuster, and you'll have a similar experience. Films such as *The Pelican Brief* and *Clear and Present Danger* portray fictional Reaganesque presidents in the light that Hollywood sees Reagan: as equal parts faker, killer, and doofus.

Aside from Martin Anderson's *Revolution* and a few other works, there is empty space where serious defenses of the Reagan administration ought to be. Dinesh D'Souza's new biography is an effort to plug the gap. This concise book offers a useful, if flawed, introduction to Reagan, especially for those who have heard only from the bashers.

D'Souza worked in the White House toward the end of Reagan's tenure. At the time, he admits, he saw the president as a nice fellow atop an administration sinking into scandal and internal strife. Hindsight has changed his view. "Previously I admired the man but had doubts about his leadership," he says. "Now I see that he had faults as an individual but was an outstanding statesman and leader."

Reagan certainly fumbled with details: The book recounts the now-famous story of the time he mistook his own housing secretary for a big-city mayor. But on the large issues and in the long term, Reagan was closer to the truth than his liberal critics. "We're on the edge of a world crash," said Sen. Daniel Patrick Moynihan (D-N.Y.) in 1982—just when we were on the edge of an historic boom. In 1986 House Speaker Jim Wright sputtered at Reagan's "tear down this wall" challenge to Gorbachev: "It just makes me have utter contempt for Reagan. He spoiled the chance for relations between our two countries." You know what happened next.

History has forced the critics to adjust their initial image of Reagan as an economy-wrecking, war-mongering monster. ("The evil is in the White House at the present time," said House Speaker Tip O'Neill in 1984.) Instead, they have adopted what D'Souza calls "the Revised Standard Version," which acknowledges that, well, maybe we did end up with peace, prosperity, and the total collapse of Soviet communism. But that was just coincidence, says the RSV. Reagan could not possibly have had anything to do with it, since he was just a cheerful simpleton with incredible luck. D'Souza points out that even many conservatives have bought this view, at least in part.

This book guts the RSV. Its numerous examples show that the big decisions belonged to Reagan, not his cynical and prag-

Rebutting the notion that he passively read the lines that others set before him, Dinesh D'Souza explains that Reagan was Reaganism's primary author and that he wrote much of his own material. Drafts of his 1983 "Evil Empire" speech show a good deal of the language in Reagan's distinctive and legible handwriting.

matic handlers. Rebutting the notion that he passively read the lines that others set before him, D'Souza explains that Reagan was Reaganism's primary author and that he wrote much of his own material. Anyone can verify D'Souza's point by visiting the Reagan Library in Simi Valley, California. In reading drafts of major addresses, such as the 1983 "Evil Empire" speech in Orlando, you will find that a good deal of the language is in Reagan's distinctive and legible handwriting.

Reagan accomplished so much, says D'Souza, because he had mastered the three basic elements of leadership: vision, a bias for action, and an ability to build support for his policies. Despite his ideological commitments, he was flexible in day-to-day maneuvers and tolerant of intraparty disagreements. His agility reflected his self-confidence: He could afford the occasional sidestep because he knew where he wanted to go.

Though vivid and readable, D'Souza's account falls short of being definitive. In his enthusiasm to paint Reagan in bold colors, he sometimes misses the pastels that are part of the historical record.

D'Souza lists the major domestic and international developments of the 1980s and concludes that "Reagan was the prime mover; he brought them about." That's a stretch, as D'Souza implicitly concedes later in the book. Discussing the 1982 recession, he says that even Reagan's critics "recognized that [Fed Chairman Paul] Volcker was the prime mover and that his agency is independent of executive control." Reagan did provide crucial support for Volcker's anti-inflationary policies, as D'Souza quickly adds. But by definition, any development can have only one "prime mover."

D'Souza's Reagan-centrism distorts his treatment of the massive 1986 tax reform bill, which he briefly describes as a neat compromise between Reagan and congressional Democrats. In fact, the bill had a wild ride through the House and nearly died in the GOP Senate, until Finance Committee Chairman Bob Packwood rewrote it while consuming mass quantities of beer. In this case, as in others, the constitutional separation of powers limited the president's control over the course of events.

On the broader issue of taxes, D'Souza properly praises Reagan's leadership in winning an across-the-board cut in 1981. The following year, however, scary deficit projections prompted Reagan to push the biggest peacetime tax increase in history. Although describing the move as a mis-

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take, D'Souza says the Gipper learned his lesson: "Reagan wouldn't agree to any further tax increases, which he believed would stifle the incentives of entrepreneurs and inhibit economic growth." But as D'Souza should have noted, then came a nickel-a-gallon boost in gasoline taxes in 1982, accelerated increases in Social Security taxes in 1983, and various tax hikes in the budget pacts of 1984 and 1987. Although the latter tax packages mainly worked at the margins, they set a precedent for the Big Bad Deal of 1990.

The biggest disappointment of the Reagan administration was its failure to slash the Washington bureaucracy. Not only did all the cabinet departments survive, but Reagan signed legislation creating a new one: the Department of Veterans Affairs. D'Souza admits that Reagan flopped on the domestic-spending side but blames interest group politics and the public's appetites: "As a believer in popular government, Reagan had no intention of thwarting the shared preferences of the people." While plausible, that analysis clashes with an earlier comment: "Reagan did not merely follow the path of public opinion, however. Like a true leader, he worked hard to shape it, so that he could point out the best way for the country to achieve its ideals."

Given all the political constraints, Reagan could not have won a total victory against big government, but he could have done much more. In this respect, free-market activist Fred Smith got it right: "[T]he Reagan revolution hasn't failed—it really hasn't been tried." ◆

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Radical Squares

By Nick Gillespie

The Other Side of the Sixties: Young Americans for Freedom and the Rise of Conservative Politics, by John A. Andrew III, New Brunswick: Rutgers University Press, 286 pages, $19.95

It's a curious fact of contemporary politics that conservatives have emerged as keepers of the 1960s flame. Although the '60s—that great blob of a decade most expansively defined as beginning with Kennedy's inauguration and ending with Nixon hopping a helicopter to San Clemente—were arguably the high-watermark of liberalism, contemporary liberals seem content to skip over the period. The tendency is understandable: Though the decade started out well enough for them, it ended badly. The era's legacy of failed social programs, foreign-policy blunders, and righteous skepticism toward ruling authorities undermined enthusiasm for all sorts of centralized planning, thereby laying the groundwork for the end of the era of big government. As liberal historian David Burner wrote in the bitter but engaging *Making Peace with the 60s*, "An era promising in its beginnings and heroic in its ambitions ended by programming liberalism into a long decline." (See "Peace Corpse," May 1997.)

If liberals are wont to ignore the decade (adding an ironic twist to the old joke that if you can remember the '60s, you weren't there), conservatives hope to keep the memories burning brightly—though controllably—in the nation's collective memory. Conservatives gain a sense of self, mission, and momentum by defining themselves against the '60s: As they see it, they share none of the blame but deserve all the credit for delivering us all from a Day-Glo social and political Apocalypse Then. Hence, Newt Gingrich's condemnations of leftoid "McGovernik[s]" and his contention that the country "went off on the wrong track" starting "with the Great Society and the counterculture"; House Majority Leader Dick Armey's belief that "all the problems began in the Sixties"; conservative historian Harvey C. Mansfield's gloss that the "late sixties were a comprehensive disaster for America"; and a recent issue of *The American Enterprise* dedicated to exploring the '60s as "days of confusion" and a "national nervous breakdown." Unsurprisingly, much of the conservatives' wrath is directed at the baby-boomer counterculture, that "age cohort" which turned "to dreams of revolution and the destruction of institutions," to quote from *Slouching Toward Gomorrah*, Robert Bork's etiology of "American decline" that opens with two chapters devoted to '60s-era "revolutionary nihilism."

In this context, John A. Andrew III's *The Other Side of the Sixties: Young Americans for Freedom and the Rise of Conservative Politics* is a particularly interesting act of historical recovery. Not only does Andrew, a liberal historian at Franklin & Marshall College, document just what young conservatives were up to in the '60s (activity largely ignored by previous historians), his identification of YAF as one of the era's three major student groups (along with Students for a Democratic Society and the Student Non-Violence Coordinating Committee) suggests a reading of the decade that provocatively complicates conservative castigations of student "radicals." Like SDS and SNCC, writes Andrew, YAF "challenged the status quo...and... believed that the path of change lay through grass-roots organization and activism....All three criticized ruling elites, and combined ideology with activism, principles with politics." Also like SDS and SNCC—albeit from a right-wing perspective—YAF "emerged to offer an ideological and structural critique of the reigning liberalism. They sought to reject, not reform, the consensus liberalism."

Contrary to conservative bromides, then, it was not only left-wingers who dreamed of revolution during the '60s. Indeed, as time passes, it is becoming more apparent that the '60s were a radical decade, irrespective of ideological orientation. At various moments, fringe groups such as the John Birch Society and the Black Panthers enjoyed considerable influence within mainstream politics, which itself tended to extremes. Even as liberals shifted to the left, embracing bold plans to remake American society from top to

Barry Goldwater campaigning: "Extremism in the defense of liberty is no vice!" thundered the YAF hero in 1964. As time passes, it is becoming more apparent that the '60s were a radical decade, irrespective of ideological orientation.

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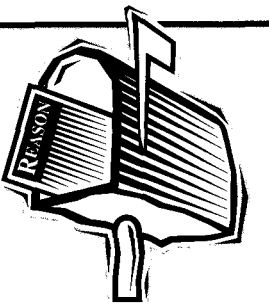
bottom, conservatives—and especially YAF—rallied around Barry Goldwater, who cast his contempt for liberalism and Rockefeller Republicanism alike in characteristically extreme terms. "Extremism in the defense of liberty is no vice!" Goldwater famously thundered in his speech accepting the 1964 Republican presidential nomination. "Moderation in the pursuit of justice is no virtue!" (Andrew recounts an early '60s *New Yorker* cartoon with the punchline, "And then we have another son—a radical—who's joined Barry Goldwater's conservatives.") And as Tom Hayden, of all people, wrote in 1961, "What is new about the new conservatives is their militant mood, their appearance on picket lines." In summarily dismissing the '60s, contemporary conservatives make two mistakes: They ignore their own past and forget where their oxymoronic rhetoric of a conservative "revolution" comes from.

The brainchild of William F. Buckley Jr. and a few other prominent conservatives (including then–*National Review* Publisher William Rusher, conservative journalist M. Stanton Evans, and Republican fund-raiser Marvin Leibman), YAF was designed to combat the bland, centrist "modern Republicanism" that Dwight Eisenhower, Nelson Rockefeller, and even Richard Nixon had brought to the GOP. Specifically, Andrew writes, it "sought to place conservatives in control of the Republican Party, and to inject conservative politics into the mainstream of American political life." The group officially came into existence in late 1960, after Buckley and his colleagues invited more than 100 young people they considered "outstanding youth leaders" and "active and influential conservatives" to a confab at Buckley's estate in Sharon, Connecticut (an odd setting, perhaps, to protest Rockefeller Republicanism).

Two years before SDS's better-known "Port Huron Statement," YAF came out with its own angry rebel yell, the "Sharon Statement," which characterized the late 1950s—the very period contemporary conservatives invoke as an American Eden—as a "time of moral and political crisis." Largely written by M. Stanton Evans, the Sharon Statement is pitched to youthful idealists—"It is the responsibility of the youth of America to affirm certain eternal truths"—who saw danger in creeping governmental centralization.

"Foremost among the transcendent values is the individual's use of his...free will, whence derives his right to be free from the restrictions of arbitrary force," reads the statement. "Liberty is indivisible, and that political freedom cannot long exist without economic freedom." At the



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same time, the statement invoked Cold War containment politics that suggested national interests could be placed ahead of individual rights: "The forces of international Communism are, at present, the greatest single threat to these liberties...the United States should stress victory over, rather than coexistence with, this menace." Hence, YAF supported the peacetime draft and its early national director, Douglas Caddy, defended before Congress the loyalty-oath provisions of the National Defense Education Act, arguing state intervention was justified in the name of national security.

As Andrew notes, this mix of individual liberty and collective response was not particularly stable and would in fact lead to significant splits within the organization. But he also notes that "more than anything else...their anticommunism bound them together and made possible agreement despite the conflicting strains of conservative thought." (Throughout the book, Andrew identifies libertarians—"libs"— as a subset of "conservatives." Which, in a YAF context and the context of the times, they were.)

The Other Side of the Sixties details YAF's activities during the early 1960s, especially its significant contribution to Goldwater's nomination. Members testified before Congress, published essays and op-eds excoriating every manifestation of liberalism, proselytized on college campuses, and pulled the GOP rightward by lobbying for hard-core conservative candidates and issues. A measure of YAF's appeal was their 1962 "Conservative Rally for World Liberation from Communism" in New York, which pulled an "overflow crowd" to Madison Square Garden. Dues-paying membership probably peaked around 30,000 and YAF was considered important—and subversive—enough to be surveilled by the federal government and regularly attacked by other student groups such as SDS.

But, Andrew argues persuasively, the group's real contribution cannot be measured in numbers, or even be understood only in terms of the '60s themselves. "Although never able to transform electoral politics or enact dramatic reforms during the period," he writes, "YAF infiltrated the Republican Party at the grass roots and served as a breeding ground for future generations of conservative leaders. The Goldwater defeat in 1964, often considered a lethal blow to conservatism, stilled neither the excitement nor the commitment of [young conservatives]."

Indeed, YAF provided a training ground for scores of people who would later become influential in conservative politics, including figures such as former Rep. Robert Bauman (and his ex-wife Carol Dawson), fund-raiser Richard Viguerie, pundit/presidential candidate Pat Buchanan, Moral Majority and Conservative Caucus co-founder Howard Phillips, and U.S. Circuit Court Judge Diarmuid O'Scannlain. More important, perhaps, YAF provided a rhetoric for latter-day conservatism. When Newt Gingrich "told reporters in 1995 that he would cooperate with President Bill Clinton, but not compromise with him, he was speaking a language advanced by YAF in the early 1960s," writes Andrew.

The Other Side of the Sixties documents the tensions that existed at an early stage in the once-strong libertarian-conservative alliance; the institutional history of YAF suggests the conflict will only become more heated.

If *The Other Side of The Sixties* has a significant failing, it is that the book basically stops with the electoral blowout of Barry Goldwater. This seems to be partly due to archival limitations (Andrew notes that there is "no central manuscript archive for either YAF or the right wing"). It is also partly due to Andrew's interest in exploring less-picked-over parts of the 1960s (an impulse that led him to YAF in the first place). While those authorial decisions are understandable, they mean that the whole story of YAF in the 1960s is not told. It's a tale worth telling, since it completes the narrative Andrew has begun and suggests yet another way that YAF—and the 1960s—remain very relevant to contemporary politics.

By the late '60s, the ideological divisions in YAF between conservatives—who, heavily influenced by people such as Buckley in-law and Goldwater speechwriter L. Brent Bozell, saw the state as a means to achieve a return to a "traditional" society—and libertarians—who championed individual liberty above all else—could no longer be masked over by an overriding commitment to anti-communism. The Vietnam War—or, more precisely, the draft—effectively split the organization. Conservatives felt the Cold War legitimized conscription; libertarians saw the draft as slavery.

At the 1969 YAF convention in St. Louis, a heated debate broke out over the group's position on the draft. Conservatives eventually agreed to call for the replacement of a conscripted force with a voluntary one, albeit on efficiency grounds. When YAF's Libertarian Caucus pushed for a resolution advocating draft resistance as a legitimate form of civil disobedience, conservatives demurred. When a member of the Anarchist Caucus (in the '60s, even a predominantly right-wing organization could support an anarchist faction) denounced the war as an imperialist adventure and burned his draft card, all hell broke loose. The convention devolved into a shouting match between conservatives and libertarians. The latter were derided as "lazy fairies" and essentially run out of the organization. As a libertarian attendee once told me, the scene, a watershed moment for the self-consciously "libertarian" movement, was exhilarating in a very '60s way.

That same split between social conservatives and libertarians only continues to grow in contemporary politics, perhaps made irreparable by the demise of communism and a common enemy. Indeed, conservatives are increasingly viewing libertarians—with their embrace of individual choice and evolving social orders—as their true enemy. In recovering an ignored part of an important decade, *The Other Side of the Sixties* documents the tensions that existed at an early stage in that once-strong alliance; the institutional history of YAF suggests that the conflict will only become more heated.

Nick Gillespie (gillespie@reason.com) is a REASON *senior editor.*

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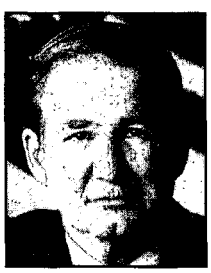

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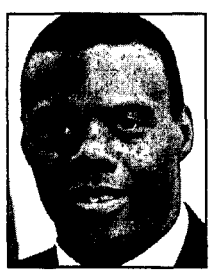

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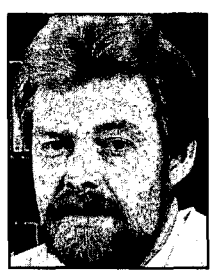

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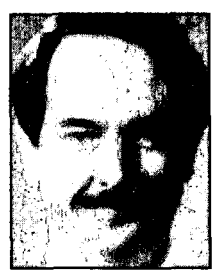

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Busy Work

How energetically government protects the public interest

By Thomas W. Hazlett

In 1966, my good friend—and great American—Sol Schildhause was picked to head a cable television "task force" at the Federal Communications Commission. The creation of the task force was a consolation prize to the fledgling cable industry, which had just suffered a series of humiliating regulatory defeats with rules protecting TV broadcasters from their new rivals. Sol gladly accepted his assignment and scheduled proceedings to produce fact-finding about emerging coaxial technology.

Wrong move. Broadcaster lobbyists heard about Sol's efforts and descended upon the commission at warp speed. Hadn't they just crushed their cable foes fair and square with rules made officially in the "public interest"? Wasn't Sol's inquiry a rear-guard action to circumvent due process? A broadcast lobby tsunami engulfed the FCC.

Sol was bobbing in rough seas. Strolling down an FCC hallway, a commission member grabbed him solidly around the shoulders: "Sol, Sol, Sol. What the hell is going on over there at your Cable Bureau?" Sol, responding proudly, boasted: "Well, we're doing some very good things. Finding out a lot of interesting stuff about the new communications...."

At which point the commissioner cut in: "Dammit, Sol. You're supposed to *look* busy, not *be* busy."

The episode illustrates the gap between the glossy public perception and the tacky private reality of what is called "the regulation of business." The businesses we purport to regulate often end up regulating us, securing a far more faithful customer base through federal enforcement than they could ever amass through the cold play of market competition.

But, of course, evil corporate villains can't play this game alone. The captains of industry know something about marketing, and "Monopoly Profits for Rich White Guys!" just ain't zippy on a bumper sticker. So they contract out, enlisting a skilled political sales team to devise a public relations angle. The most successful in this business have a magical ability to convince Joe Sixpack that he is the very lucky beneficiary of policies that cost him plenty and deliver him *bupkis*.

But, alas, politicians do not come cheaply. They are typically unruly employees, given to repeated holdouts, forever whining about working conditions and pestering their patrons for a raise in pay. Take that quintessential regulatory craftsman, President Richard M. Nixon. Thanks to some recently released audio tapes, we may now calibrate his estimate of the market price for a favorable regulatory ruling in the TV network sector.

To obtain his compensation package (which included prime-time coverage of Tricia Nixon's Rose Garden wedding), Nixon personally ordered that a Justice Department antitrust suit be delayed to create anticipatory incentives for network executives. "If the threat of screwing them is going to help us more with their programming than [filing suit], then keep the threat," our president told aides in 1971. "Don't screw them now, [otherwise] they'll figure that we're done." Adviser Chuck Colson, who now runs his own prison ministry, readily agreed: "Keeping this case in a pending status gives us one hell of a club on an economic issue that means a great deal to those three networks ...something of a sword of Damocles."

To clarify any lingering doubts as to the basic premise of government regulation, Nixon elaborated for the historical record: "Our gain is more important than the economic gain. We don't give a goddam about the economic gain. Our game here is solely political....As far as screwing them is concerned, I'm very glad to do it."

Irony: The broadcasters—having used the FCC to twist their own screws into upstart cable rivals—were now getting drilled by the very handymen they had hired. Talk about not being able to find good help. Nowhere is this truer than in Washington, D.C., where civil servants may be not at all servile.

Excepting, of course, that little man Al Gore. Our vice president totally cares about promoting ecology and would always choose to do the green thing. This the public knows. Which makes his fee for P.R. work on behalf of industrial polluters surprisingly affordable.

Consider the heavy lifting he did on behalf of Champion International, a company whose paper mill in Canton, North Carolina, has used the Pigeon River as a septic tank for some 90 years. Today the estuary features, in *Newsweek*'s description, "a coffee-colored brew of industrial pollutants that, on a good day, smells like rotten eggs." But in 1987, when the Environmental Protection Agency proposed beefing up water quality, then-Sen., and presidential candidate, Gore went to bat for Champion.

With an eagle eye on the North Carolina primary, Gore begged the EPA to back off, noting his "regret" as to any confusion regarding his previous—and still public—stance in favor of tough laws to clean up the Pigeon River. The political tat for Al's tit was backing from Champion, Democratic Party endorsements in the Tarheel State—and an easy win on election day.

Somehow the extortions of the Nixons and the extractions of the Gores do no harm to the government regulation of business, a practice which remains popular among the masses and staunchly defended by the elites. Then again, when government is seen from a distance, I can sort of understand this attitude. After all, everyone *looks* busy.

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) teaches economics and public policy at the University of California at Davis.

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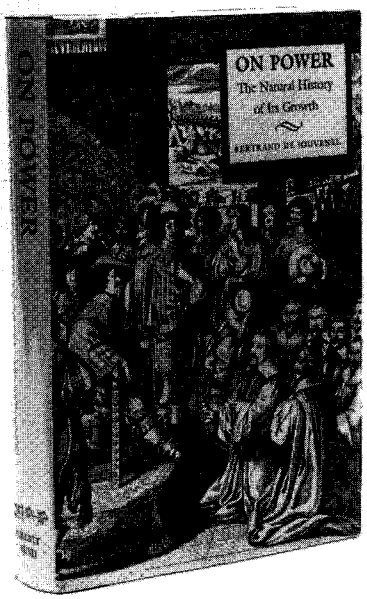

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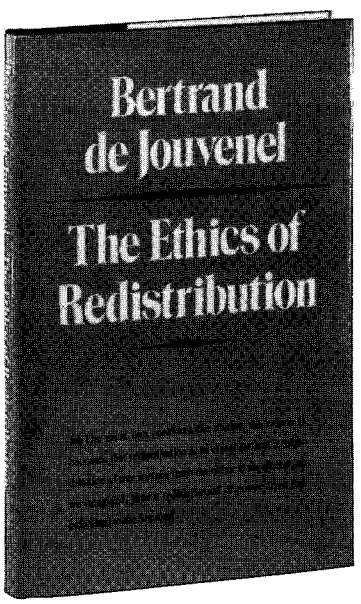

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